



515190

DORSEY & WHITNEY*A Partnership Including Professional Corporations*2200 FIRST BANK PLACE EAST
MINNEAPOLIS, MINNESOTA 55402
(612) 340-2600TELEX: 29-0605
TELECOPIER: (612) 340-2868510 NORTH CENTRAL LIFE TOWER
445 MINNESOTA STREET
ST. PAUL, MINNESOTA 55101
(612) 227-8017P. O. BOX 848
340 FIRST NATIONAL BANK BUILDING
ROCHESTER, MINNESOTA 55903
(507) 288-3156312 FIRST NATIONAL BANK BUILDING
WAYZATA, MINNESOTA 55391
(612) 475-0373RENEE PRITZKER
(612) 340-2979201 DAVIDSON BUILDING
8 THIRD STREET NORTH
GREAT FALLS, MONTANA 59401
(406) 727-3632SUITE 675 NORTH
1800 M STREET N.W.
WASHINGTON, D. C. 20036
(202) 296-278030 RUE LA BOÉTIE
75008 PARIS, FRANCE
011 331 562 32 50

May 16, 1984

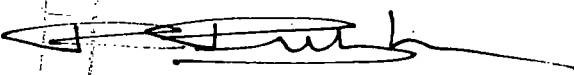
Honorable Floyd Boline
United States Magistrate
Room 570
United States District Court
110 South Fourth Street
Minneapolis, Minnesota 55401BY MESSENGERRe: United States of America, et al. v.
Reilly Tar & Chemical Corporation, et al.
Civ. No. 4-80-469

Dear Magistrate Boline:

Enclosed please find two copies of the Table of Deposition Questions submitted in support of Reilly Tar and Chemical Corporation's Renewed Motion for an Order Compelling Discovery. This motion is scheduled for hearing on May 30, 1984.

The table is provided to the Court in order to facilitate a quick reference to the deposition questions which are the subject of the motion to compel. The table also provides a brief explanation of why the answers to the various questions posed to the witnesses are not privileged. These explanations are not meant to be exhaustive, and a more thorough explanation is provided in Reilly's memorandum in support of this motion.

Very truly yours,

RECEIVED
Renee Pritzker

RBP:ph

MAY 19 1984

Enclosures

Office of Regional Counsel
EPA - Region Vcc: All Counsel of Record
Robert Leininger, Esq.
Paul Zerby, Esq.
John R. Kenefick, Esq.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

and

STATE OF MINNESOTA, by its
Attorney General Hubert H.
Humphrey III, its Department
of Health, and its Pollution
Control Agency,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION;
HOUSING AND REDEVELOPMENT
AUTHORITY OF ST. LOUIS PARK;
OAK PARK VILLAGE ASSOCIATES;
RUSTIC OAKS CONDOMINIUM, INC.;
and PHILIP'S INVESTMENT CO.,

Defendants,

and

CITY OF ST. LOUIS PARK,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION,

Defendant,

and

CITY OF HOPKINS,

Plaintiff-Intervenor,

v.

REILLY TAR & CHEMICAL CORPORATION,

Defendant.

Civil No. 4-80-469

**TABLE OF DEPOSITION QUESTIONS
SUBMITTED IN SUPPORT OF REILLY
TAR AND CHEMICAL CORPORATION'S
RENEWED MOTION FOR AN ORDER
COMPELLING DISCOVERY**

P R E F A C E

This table lists the questions which are subject to Reilly Tar and Chemical Corporation's renewed motion for an order compelling answers to the deposition questions propounded to Messrs. Lindall, Van de North, Macomber, Worden, Popham, Wikre, Johannes, Wiik and McPhee. The table lists the questions which were previously cited in Attachment A to Reilly's Notice of Motion and Renewed Motion dated April 20, 1984. It is provided to the Court for ease of reference. This table also provides a brief explanation of why the answers to the various questions posed to the witnesses are not privileged. These explanations are not meant to be exhaustive, and a more thorough explanation is provided in Reilly's memorandum in support of this motion.

There are three questions which were originally included in Reilly's motion to compel which are withdrawn at this time. The first is the question asked of Mr. Worden in his deposition at pages 18:19-19:4. Reilly agreed to withdraw this question in a Rule 4 conference with the City. The other two questions were asked of Mr. Lindall during his deposition and are found at pages 99:9-102:13 and 127:24-128:4. These questions were posed to counsel for the State rather than to the witness. They were originally included to demonstrate the positions of the parties on the privilege issues.

APPENDIX A

CITATIONS TO DEPOSITION QUESTIONS RELATING TO SCOPE OF THE 1970
LAWSUIT OBJECTIONS THERETO AND REASONS ANSWERS ARE NOT PRIVILEGED

DEPOSITION OF ROBERT J. LINDALL:

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
19:4-20:16	<p>MR. SCHWARTZBAUER: Were you one of the staff members that made that recommendation?</p> <p>MR. SCHWARTZBAUER: . . . I am just referring to the recommendation referred to in the minutes [RTC Exhibit 7] where the minutes say that, "Frank Howard spoke urging the Agency, based on the report prepared by the Agency staff, to take the necessary enforcement action." Well that refers to a report.</p> <p>And then the minutes go on and say, "Mr. Tuveson then moved that the recommendations of the staff be adopted and that legal action be initiated."</p> <p>Those are the recommendations that I mean, the recommendations that the PCA voted upon at that meeting. Were you one of the</p>	<p>MR. COYNE: I object . . . Ed, would you clarify the question as to limit your recommendation of his being made here in your question?</p>	<p>Reilly has demonstrated substantial need for obtaining this information. The inquiry does not seek the witnesses current trial strategy or legal opinions prepared for trial in this case. To the extent that the recommendation was revealed in a public meeting, the information is not privileged or confidential.</p>

DEPOSITION OF ROBERT J. LINDALL:

APPENDIX A (continued)

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	staff members that made that recommendation, Bob?	MR. COYNE: I object to the question and direct the witness not to answer on the basis of the question elicits his advice given to the client during the period of time he represented the Agency.	
	MR. SCHWARTZBAUER: So that I take it, you are going to follow that advice?		
	MR. LINDALL: I infer from Mr. Coyne's comments that he is directing me not to answer and I intend to honor his request.		
	MR. SCHWARTZBAUER: Just so we can save time, I assume everytime he objects are you going to follow his request; is that right?		
	MR. LINDALL: You may assume that.		
21:3-21:14	MR. SCHWARTZBAUER: Can you remember when the City of St. Louis Park, either through Mr. Howard or through anybody else, had urged the staff and the Agency to take this action against Reilly?	MR. COYNE: I object on the basis that it inquires as to either communications made by the staff to Mr. Lindall or Mr. Lindall's own judgment about the matter, and such	As reflected in RTC Exhibit 7, Mr. Howard urged the Agency to take the enforcement action in a public meeting. Therefore, any communication of this information was not intended to be secret or confidential. Reilly has also demonstrated substantial need for obtaining this information.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
		communications or work product are privileged.	
	MR. SCHWARTZBAUER: Dennis, are you advising him not to answer?	MR. COYNE: Yes, I am.	
22:5-22:20	MR. SCHWARTZBAUER: I don't find any documents relating to . . . a meeting before September 14th [1970]. But let me just ask you about it. Tell me to the best of your knowledge what was said.	MR. COYNE: I am sorry, what was said when, Ed?	Reilly is attempting to inquire into the scope of the 1970 lawsuit which the State has affirmatively placed in issue thereby waiving associated privileges. Also, RTC Exhibit 85 indicates that meetings between the PCA and City were held prior to Sept- ember 1970 and the memo reveals in sub- stance the discussions at those meetings. Therefore, by voluntary disclosing RTC Exhibit 85 the State has waived the privilege for any meetings between the parties on the subject of the lawsuit, or at the very least waived the privilege for meetings reflected in RTC Exhibit 85.
	MR. SCHWARTZBAUER: At any of the meetings with Mr. Popham.	MR. COYNE: I object on the basis that the communication between Mr. Lindall as counsel for the Agency and Mr. Popham or other members of his firm as counsel for the City of St. Louis Park. It would be privileged communications and as such, are not subject to these questions posed by Mr. Schwartzbauer. And I would instruct the witness not to answer.	

DEPOSITION OF ROBERT J. LINDALL:

APPENDIX A (continued)

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
24:23-25:7	MR. SCHWARTZBAUER: Just calling your attention to Item 4 [RTC Exhibit 1] that begins on the bottom of the first page and carrying on over to the second. The author has written, "This is primarily a local problem and should be handled as such." Can you remember that any official of the PCA took that position at about this time [5-27-69]?	MR. COYNE: I object and direct the witness not to answer insofar as it reaches to communications between his client and himself during the period of time he represented the Agency.	The communication was not intended to be secret or confidential. This information was also disclosed in RTC Exhibit 85, which was voluntarily disclosed by plaintiffs to counsel for Reilly. <u>See</u> RTC Exhibit 85, p. 1. By the voluntary disclosure of the document containing the statement, the plaintiffs waived any privileges that may have existed.
26:5-26:17	MR. SCHWARTZBAUER: So we don't get too encumbered and completely lost with all this lawyer talk, Bob, are you aware of any position other than confidential conversations with you that indicated that they [the PCA] thought the matter was primarily a local problem and should be handled as such?	MR. COYNE: I object to the form of the question and I think the question as posed may reach into other areas, including communications between Mr. Lindall as counsel for the Agency and counsel for the City of St. Louis Park, as an example. And therefore, I would object to the question and direct the witness not to answer.	The question does not seek the disclosure of confidential information or reach into areas protected by the attorney-client or work product privileges.

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
26:19-27:1	MR. SCHWARTZBAUER: Did the PCA tell St. Louis Park that this was primarily a local problem and should be handled as such?	MR. COYNE: Again, I object to the form of the question. It may elicit testimony with regard to knowledge of communications with the City which Mr. Lindall gained in the course of his representation of the client, and as such, is not subject to examination in our view.	The communication was not intended to be secret or confidential. This information was also disclosed in RTC Exhibit 85, which was voluntarily disclosed by plaintiffs to counsel for Reilly. See RTC Exhibit 85, p. 1. By the voluntary disclosure of the document containing the statement, the plaintiffs waived any privileges that may have existed.
27:3-27:8	MR. SCHWARTZBAUER: Did the PCA tell St. Louis Park this is primarily a local matter and should be handled as such in any conversations which was not a privileged conversation between you and your client?	MR. COYNE: Object again for the same reasons.	The question does not seek confidential information or reach into areas protected by the attorney-client or work product privileges. This information was disclosed in RTC Exhibit 85, which was voluntarily disclosed by plaintiffs to counsel for Reilly. See RTC Exhibit 85, p. 1. By the voluntary disclosure of the document containing the statement, the plaintiffs waived any privileges that may have existed.
28:23-31:12	MR. SCHWARTZBAUER: Other than communications that you may have overheard where you were present as an attorney, either communications made at a meeting that you had with members of the PCA or its staff or at meetings between yourself and attorneys for the City, which I understand Mr. Coyne claims are privileged, are you aware of any facts indicating that the PCA did indeed tell the City of St. Louis Park in sub-		The question does not seek confidential information or reach into areas protected by the attorney-client or work product privileges.

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
------------------------	----------------	-----------	--

stance that the matter of Republic Creosote cleanup was primarily a local matter and should be handled as such?

MR. COYNE: . . . With regard to this particular question, you have phrased the question with regard to communications with the City Attorneys. But you have excluded, and I assume intend for Mr. Lindall to exclude, meetings with the staff of the City of St. Louis Park. And to the extent there were such meetings with the staff of the City of St. Louis Park, those meetings in our view would be privileged.

Furthermore, your question as framed asks Mr. Lindall to make several judgments on his part as to the scope of your question. I refer now to specifically your choice of words and those include indicating that the City of St. Louis Park is in substance and so forth. So I think your question, Ed, is ambiguous and really calls for a lot of judgment on the part of the witness. And I would suggest that if you rephrase your question and proceed in a more stepwise factual way than you are presently posing your questions, that we may be able to

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
		make further progress; however, when the questions are as broad and general as this past question I am constrained to object and advise the witness not to answer.	
	MR. SCHWARTZBAUER: I will stick with the question.		
32:23-33:9	MR. SCHWARTZBAUER: [RTC Exhibit 3 states,] "In 1932 complaints were made to the Village of St. Louis Park that a municipal well contained water with a tarry taste. This Well (No. 8A) was subsequently abandoned. At the same time a group of shallow private wells were also abandoned due to taste and odor problems." Did that information relating to a municipal well coming up with a tarry taste come to your attention in the course of your duties?		This question addresses the intended scope of the 1970 lawsuit which the State has affirmatively placed in issue thereby waiving associated privileges. The information which would be subject to communication would not have been intended to be secret or confidential. To the extent the State may claim this information is work product, Reilly has demonstrated substantial need for obtaining this information.
		MR. COYNE: I object to the question since it elicits the testimony from Mr. Lindall as counsel for the Agency as to what his client communicated to him during the course of his employment.	
33:11-33:15	MR. SCHWARTZBAUER: Did [this information on a municipal well having a tarry taste] come to your attention in any form?		The question addresses the intended scope of the 1970 lawsuit which the State has affirmatively placed in issue thereby waiving associated privileges. The information which would be subject to communication would not have been
		MR. COYNE: I object again. Ed, I don't know if you are	

DEPOSITION OF ROBERT J. LINDALL:

APPENDIX A (continued)

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	MR. SCHWARTZBAUER: In any form was my question.	asking this witness if he learned about this well closing by reading the newspapers, as an example.	intended to be secret or confidential. To the extent the State may claim this information is work product, Reilly has demonstrated substantial need for obtaining this information.
34:13-34:18	MR. SCHWARTZBAUER: Did you learn of that information in any form or from any source?	MR. COYNE: I object for the same reasons I objected earlier. The question is overly broad and it delves into his communications with the PCA staff and others.	The question addresses the intended scope of the 1970 lawsuit which the State has affirmatively placed in issue thereby waiving associated privileges. The information which would be subject to communication would not have been intended to be secret or confidential. To the extent the State may claim this information is work product, Reilly has demonstrated substantial need for obtaining this information.
34:20-35:5	MR. SCHWARTZBAUER: Can you answer that yes or no, Mr. Lindall?	MR. COYNE: My objection and my direction to Mr. Lindall is not to testify with regard to any communications and knowledge learned while he was employed with the Agency in the course of his performance of his duties as a Special Assistant Attorney General. To the extent that there are communications outside of that capacity you may answer, although at this point I am not even clear when the area of inquiry is that you are asking him to be responsive of. Maybe he does.	The question addresses the intended scope of the 1970 lawsuit which the State has affirmatively placed in issue thereby waiving associated privileges. The information which would be subject to communication would not have been intended to be secret or confidential. To the extent the State may claim this information is work product, Reilly has demonstrated substantial need for obtaining this information.

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
36:11-36:22	MR. SCHWARTZBAUER: With respect to the 1932 Complaint and subsequent abandonment of a well referenced on Page 306136 of Exhibit 3, Bob, my question to you is did you learn about that in any form from any source?	MR. COYNE: I object and the basis is that the question in its present form inextricably intertwines attorney communications and work product and therefore, I am instructing the witness not to answer. In my view the burden is to the interrogator to frame questions precisely enough so that the witness may answer without compromising or entering the compromising privileged area.	The question addresses the intended scope of the 1970 lawsuit which the State has affirmatively placed in issue thereby waiving associated privileges. The information which would be subject to communication would not have been intended to be secret or confidential. To the extent the State may claim this information is work product, Reilly has demonstrated substantial need for obtaining this information.
37:12-37:20	MR. SCHWARTZBAUER: Turning to the second page [of RTC Exhibit 5] which is 2900032 and referring to the third full paragraph. Do you remember becoming aware of the information stated therein; that is, "A 'bioassy' conducted on waters collected at this point on April 18th, [1970], produced almost immediate fatality to fathead minnows --"?	MR. COYNE: I object and advise the witness not to answer for the same reasons previously stated.	The question addresses the intended scope of the 1970 lawsuit which the State has affirmatively placed in issue thereby waiving associated privileges. The information which would be subject to communication would not have been intended to be secret or confidential. To the extent the State may claim this information is work product, Reilly has demonstrated substantial need for obtaining this information.
38:5-38:12	MR. SCHWARTZBAUER: Directing your attention to the third page, [of RTC Exhibit 5],		The question addresses the intended scope of the 1970 lawsuit which the State has affirmatively placed in issue

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	which is stamped 2900033 in the second full paragraph, which indicates that, "samples of the bottom sediments in the ditch south of Walker Street . . . revealed heavy accumulation of black, oily creosote lade sediments." Do you remember that coming to your attention?	MR. COYNE: I object for the same reasons as earlier stated.	thereby waiving associated privileges. The information which would be subject to communication would not have been intended to be secret or confidential. To the extent the State may claim this information is work product, Reilly has demonstrated substantial need for obtaining this information.
39:6-39:8	MR. SCHWARTZBAUER: Did you become aware of these conclusions [found in RTC Exhibit 5] in 1970?	MR. COYNE: Same objection and advise Mr. Lindall not to answer.	The question addresses the intended scope of the 1970 lawsuit which the State has affirmatively placed in issue thereby waiving associated privileges. The information which would be subject to communication would not have been intended to be secret or confidential. To the extent the State may claim this information is work product, Reilly has demonstrated substantial need for obtaining this information.
40:19-41:4	MR. SCHWARTZBAUER: Do you have any idea why there are two documents, Exhibits 5 and Exhibit 6, both of which appear to be reports made in April, 1970, but are slightly different in format and were evidently prepared by different people? Can you explain that?	MR. COYNE: The objection is to the form of the question and that it may elicit from the witness communications and work product which are privileged.	The information communicated would not have been intended to be secret or confidential. The inquiry does not seek current trial strategy or material prepared for trial in this case.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	MR. SCHWARTZBAUER: Same advice?	MR. COYNE: Same advice.	
41:6-41:15	MR. SCHWARTZBAUER: I have already handed you Exhibit 7. . . . Referring again to the recommendation of the staff that the Agency take enforcement action against Republic Creosote. Bob, what was the principal factual basis for that recommendation of the staff?	MR. COYNE: I object and direct the witness not to answer as the question necessarily raises privileged communications with the client and attorney work product.	The question addresses the intended scope of the 1970 lawsuit which the State has affirmatively placed in issue thereby waiving associated privileges. Reilly has also demonstrated substantial need for obtaining this information.
42:25-43:15	MR. SCHWARTZBAUER: I am going to direct your attention to Roman Numeral VII, [of RTC Exhibit 8, the Complaint,] Bob. It reads, "Defendant, through the conduct of the aforesaid business activities, is presently, and has been in the past, polluting the waters of the State of Minnesota in violation of law and administrative regulations, including, but not limited to Water Pollution Control Regulation 4" etcetera. Now, at the time you drafted that Complaint did you have an understanding of the	MR. COYNE: I object on the basis that it elicits from the witness attorney work product and his impressions and understandings at	The question addresses the intended scope of the 1970 lawsuit which the State has affirmatively placed in issue thereby waiving associated privileges. Reilly has also demonstrated substantial need for obtaining this information.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	statutory definition of the waters of the State?	the time the lawsuit was filed.	
43:17-44:8	MR. SCHWARTZBAUER: I am going to read to you, Bob, from Minnesota Statute 105.37, subdivision 7, which defines the words "waters of the State." Quote . . . "Waters of the State means any waters, surface or underground, except those surface waters which are not confined, but are spread and diffused over the land. Waters of the State including all boundaries and inland waters." Were you aware of that statutory definition at the time you drafted that Complaint?	MR. COYNE: I object and instruct the witness not to answer.	The question addresses the intended scope of the 1970 lawsuit which the State has affirmatively placed in issue thereby waiving associated privileges. Reilly has also demonstrated substantial need for obtaining this information.
44:10-44:15	MR. SCHWARTZBAUER: At the time you drafted this paragraph of the Complaint, Bob, were you aware that the statutory definition of the words "waters of the State" included ground waters and -- as well as surface waters?	MR. COYNE: I object and instruct him not to answer.	The question addresses the intended scope of the 1970 lawsuit which the State has affirmatively placed in issue thereby waiving associated privileges. Reilly has also demonstrated substantial need for obtaining this information.
44:17-45:2	MR. SCHWARTZBAUER: Were you aware at the time you drafted that Complaint of the documents I just got finished showing you; that is, Exhibit		The question addresses the intended scope of the 1970 lawsuit which the State has affirmatively placed in issue thereby waiving associated privileges. The information which would be subject to

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	3, the Hickok Report; Exhibits 5 and 6, the reports of Messrs. Wikre, Koonce and others -- were you aware as well, Bob?	MR. COYNE: The question-- I object to the question and advise the witness not to answer it on the basis that the question necessarily elicits from the witness some identification of the documents relied upon in drafting the lawsuit and as such is work product and is privileged.	communication would not have been intended to be secret or confidential. To the extent the State may claim this information is work product, Reilly has demonstrated substantial need for ob- taining this information.
48:9-48:14	MR. SCHWARTZBAUER: What can you remember, if anything, with respect to your concerns, if any, with respect to [the soils on] the other side of Walker Street [as reflected in RFC Exhibit 9]?	MR. COYNE: I object to the question on the basis that it elicits the opinion of counsel for the Agency, and direct the witness not to answer.	The question addresses the intended scope of the 1970 litigation which the State has affirmatively placed in issue thereby waiving associated privileges. Reilly has also demonstrated substantial need for obtaining this information.
54:10-54:15	MR. SCHWARTZBAUER: Why did you ask the question of Mr. Finch [of Reilly] as to whether they had taken tests [of the penetration of the Reilly product into the soil] on the other side of Walker Street?	MR. COYNE: I object to the question and ask the witness not to answer on the basis that it necessarily elicits testi- mony concerning his thoughts, impressions and strategy for the litigation.	The question addresses the intended scope of the 1970 litigation which the State has affirmatively placed in issue thereby waiving associated privileges. Reilly has also demonstrated substantial need for obtaining this information.

DEPOSITION OF ROBERT J. LINDALL:

APPENDIX A (continued)

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
54:17-54:20	MR. SCHWARTZBAUER: Was there anything that you saw that led you to ask that question [of Mr. Finch as reflected in RTC Exhibit 9]?	MR. COYNE: Object for the same reasons and instruct the witness not to answer.	The question addresses the intended scope of the 1970 litigation which the State has affirmatively placed in issue thereby waiving associated privileges. Reilly has also demonstrated substantial need for obtaining this information.
54:22-55:11	MR. SCHWARTZBAUER: This memo [RTC Exhibit 9] indicates "He [Mr. Lindall] was informed that we had no cause to take any measurements of this type as this was speculation made by the City." Do you know what speculation is referred to there? MR. LINDALL: May I answer?	MR. COYNE: The objection and the direction not to answer is based on twofold objection. In addition to the previous objections relating to privileged areas I also object on the basis that the question elicits Mr. Lindall's speculation concerning Mr. Finch's speculation about the City's speculation.	The question addresses the intended scope of the 1970 lawsuit which the State has affirmatively placed in issue, thereby waiving associated privileges. Reilly has also demonstrated substantial need for obtaining this information.
59:16-59:23	MR. SCHWARTZBAUER: Okay. What facts do you know of that would indicate to you that Mr. Cherches is likely to have said something like that [tantamount to asserting that it was his position that the property -- the marshes	MR. LINDALL: And I certainly don't think I should answer.	The question addresses the intended scope of the 1970 lawsuit which the State has affirmatively placed in issue, thereby waiving associated privileges. Reilly has also demonstrated substantial need for obtaining this information.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	to the south of the Republic property were contaminated, as reflected in RTC Exhibit 11]?	MR. COYNE: I object for the same reasons that I objected earlier, that the question necessarily inextricably intertwines privileged and non-privileged communications, and on that basis I would object.	
60:22-61:21	MR. SCHWARTZBAUER: Okay. [RTC Exhibit 11 states:] "During the digging operations for the storm sewer Mr. Cherches, verified by Mr. McPhee, reported there were strong creosote odors and black oily material the depth of the sewer. It might have been mentioned around 18 feet, I do not recall the depth they were speaking of." Was that said?		The question addresses the intended scope of the 1970 lawsuit which the State has affirmatively placed in issue thereby waiving associated privileges. To the extent that Mr. Cherches disclosed his position at the meeting with Reilly his position was not intended to be confidential and is therefore not privileged.
	MR. LINDALL: I can't recall with certainty.		
	MR. SCHWARTZBAUER: Well, even though you can't recall with certainty do you have any recollection that that was said?		
	MR. LINDALL: I believe that-- strike that. It doesn't surprise me that it is said in this memo that he did say it at that time, at that meeting, because I--	MR. COYNE: I object to the extent that the witness-- and direct the witness not to answer--beyond the question asked which is	

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
		whether or not he recollects such a statement being made at the meeting, and ask the witness to confine his answer to the question posed.	
	MR. LINDALL: I don't recall enough about the meeting to be able to say with certainty what any person said.		
	MR. SCHWARTZBAUER: Why is it that you say that the statement attributed to Mr. Cherches is consistent with his position?	MR. COYNE: I object for the same reasons as I earlier objected and instruct the witness not to answer.	
67:9-67:15	MR. SCHWARTZBAUER: I would ask you what I hope will be a straightforward question. Did you learn in approximately December of 1970 that the City of St. Louis Park was asserting that Reilly Tar's activities as Republic Creosote's activities have resulted in ground or ground water pollution?	MR. COYNE: I object for the same reasons previously stated and advise the witness not to answer.	The question addresses the intended scope of the 1970 lawsuit which the State has affirmatively placed in issue thereby waiving associated privileges. The information which would be subject to communication would not have been intended to be secret or confidential. To the extent the State may claim this information is work product, Reilly has demonstrated substantial need for obtaining this information.
67:17-67:22	MR. SCHWARTZBAUER: Did you learn in approximately December of 1980 [1970] at the Pollution Control Agency, that Reilly Tar as Republic Creosote activi-		The question relates to the intended scope of the 1970 lawsuit which the State has affirmatively placed in issue, thereby waiving associated privileges. Reilly has also demon-

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	ties had caused ground or ground water pollution?	MR. COYNE: Object for the same reasons and advise the witness not to answer.	strated substantial need for obtaining this information.
116:1-116:10	MR. SCHWARTZBAUER: In Paragraph 2 [of RTC Exhibit 24, a memo prepared by Larry Anderson dated 12/14/71, routed to George Koonce and you,] Mr. Anderson poses some questions. He says -- the questions arise, "How much oil and creosote saturate the ground in the plant area?" And "To what extent--" Well, I will stop right there. How much oil and creosote saturate the ground in the plant area? Was that a question that was being investigated?	MR. COYNE: I object for the reasons previously stated and instruct the witness not to answer.	The question relates to the intended scope of the 1970 lawsuit which the State and City have affirmatively placed in issue thereby waiving associated privileges. Reilly has also demonstrated substantial need for obtaining this information.

APPENDIX A

CITATIONS TO DEPOSITION QUESTIONS RELATING TO SCOPE OF THE 1970
LAWSUIT OBJECTIONS THERETO AND REASONS ANSWERS ARE NOT PRIVILEGED

DEPOSITION OF GARY R. MACOMBER:

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
8:21-9:4	MR. SCHWARTZBAUER: Previously in this case we have marked a document as Reilly Tar Exhibit Number 3, which is a report from Eugene A. Hickok and Associates in September of 1969. I would like to ask you whether or not you saw that before working on the complaint in this matter?	MR. POPHAM: I thing that I would object to the question of what specific things the witness did in connection with his work on the suit.	This question addresses the intended scope of the 1970 lawsuit, which the City has affirmatively placed in issue, thereby waiving associated privileges. Reilly has also demonstrated substantial need for obtaining this information.
9:5-9:12	MR. SCHWARTZBAUER: I had intended to ask him also about whether he had reviewed Reilly Tar Exhibit 5, which was the Pollution Control Agency memo of April 22, 1970, and Reilly Tar Exhibit 6 which is the Pollution Control Agency memo dated just April 1970. Same objection?	MR. POPHAM: That would be the same objection.	The question addresses the intended scope of the 1970 lawsuit, which the City has affirmatively placed in issue, thereby waiving associated privileges. Reilly has also demonstrated substantial need for obtaining this information.
9:22-10:3	MR. SCHWARTZBAUER: Now, what persons provided you with information to assist you in drafting that [RTC Exhibit 8,		Identity of individuals who provided information is not privileged or confidential.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	the summons and complaint in the action commenced in 1970]?	MR. POPHAM: That would be objected to.	
	MR. SCHWARTZBAUER: When you object on the grounds of work product, Wayne, are you also instructing the witness not to answer the question?	MR. POPHAM: Yes, that is true.	
10:5-10:15	MR. SCHWARTZBAUER: Gary, directing your attention to Page 2 and paragraph Roman Numeral VII, [of RTC Exhibit 8] that paragraph alleges among other things as follows: "Defendant through the conduct of the aforesaid business activities is presently, and has been in the past, polluting the waters of the State of Minnesota in violation of law," et cetera. At the time you drafted that did you understand the statutory definition of the term "waters of the State"?	MR. POPHAM: That would be objected to as calling for work product.	This question addresses the intended scope of the 1970 lawsuit which the City has affirmatively placed in issue, thereby waiving associated privileges. Reilly has also demonstrated substantial need for obtaining this information.
10:17-10:20	MR. SCHWARTZBAUER: At the time you drafted that [RTC Exhibit 8] had you seen the files of St. Louis Park or the Pollution Control Agency regarding alleged groundwater pollution?	MR. POPHAM: Same objection.	The question addresses the intended scope of the 1970 lawsuit, which the City has affirmatively placed in issue, thereby waiving associated privileges. Reilly has also demonstrated substantial need for obtaining this information.

APPENDIX A

CITATIONS TO DEPOSITION QUESTIONS RELATING TO THE SCOPE OF THE 1970 LAWSUIT,
OBJECTIONS THERETO AND REASONS ANSWERS ARE NOT PRIVILEGED

DEPOSITION OF WAYNE POPHAM:

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
8:9-8:13	MR. SCHWARTZBAUER: Although you don't have any memory of the exact report, were you aware in 1970 that the Saint Louis Park consultants had informed the City of St. Louis Park that there was phenol in the groundwater and that it posed a potential health hazard?	MR. HINDERAKER: Same objection [work product].	The question addresses the intended scope of the 1970 lawsuit, which the City has affirmatively placed in issue, thereby waiving associated privileges. Reilly has also demonstrated substantial need for obtaining this information.
8:16-8:21	MR. SCHWARTZBAUER: Would you turn to Page 17 [of RTC Exhibit 3]? Page 17 is entitled, "Conclusions." Conclusion 15, "The chemical process wastes, such as those discharged by the Republic Creosoting Company, contains phenols." Did you know that in 1970?	MR. HINDERAKER: Same objection.	The question addresses the intended scope of the 1970 lawsuit, which the City has affirmatively placed in issue, thereby waiving associated privileges. Reilly has also demonstrated substantial need for obtaining this information.
8:23-9:2	MR. SCHWARTZBAUER: In Paragraph 3 [of RTC Exhibit 3] the report says, "Groundwater contaminated by phenolic compounds is objectionable and		The question addresses the intended scope of the 1970 lawsuit, which the City has affirmatively placed in issue, thereby waiving associated privileges. Reilly has also demonstrated substantial need for

DEPOSITION OF WAYNE POPHAM:

APPENDIX A (continued)

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	potentially a health hazard." Did you know that in 1970?	MR. HINDERAKER: Same objection.	obtaining this information.
11:6-11:16	MR. SCHWARTZBAUER: . . . I am going to refer you to page 2 [of RTC Exhibit 73]. Would you look at that, Wayne? In the next to the last paragraph Mr. Frazer says, "It seems quite obvious that the disposal of a substantial quantity of phenolic material on the surface of the ground in the general area where there are wells producing water for human consumption is not desirable and constitutes a serious hazard." Did the substance of that conclusion come to your attention at about this time [April 1970]?	MR. HINDERAKER: Same objections.	The question addresses the intended scope of the 1970 lawsuit which the City has affirmatively placed in issue, thereby waiving associated privileges. Reilly has also demonstrated substantial need for obtaining this information.
20:16-20:19	MR. SCHWARTZBAUER: Well, in 1970 and 1971 wasn't the project of getting rid of the Reilly plant one of the major projects of the City of St. Louis Park?	MR. HINDERAKER: Same objections.	The information sought by this inquiry is not privileged because the communication of this information was not intended to be confidential or secret.
22:17-22:19	MR. SCHWARTZBAUER: At that time [drafting of the complaint] what was your understanding of the definition of the term "waters of the State"?	MR. HINDERAKER: Same objections.	The question addresses the intended scope of the 1970 lawsuit, which the City has affirmatively placed in issue, thereby waiving associated privileges. Reilly has also demonstrated substantial need for obtaining this information.

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
22:21-22:25	MR. SCHWARTZBAUER: At the time you signed this complaint and filed it, had you seen the files of either Saint Louis Park or the Pollution Control Agency regarding alleged groundwater pollution?	MR. HINDERAKER: Same objections.	The question addresses the intended scope of the 1970 lawsuit, which the City has affirmatively placed in issue, thereby waiving associated privileges. Reilly has also demonstrated substantial need for obtaining this information.
69:24-70:14	MR. SCHWARTZBAUER: Well, why don't you turn to the exhibit for a few minutes, 85. On Page 3 you discuss the topic called, "Initial City efforts to secure compliance." The last paragraph you say in the last sentence, "During all subsequent dealings with Republic Creosote, the City continued to express concern about the groundwater condition." Is that an accurate summary of things that occurred in the negotiations between the City and Republic Creosote?	MR. HINDERAKER: The document speaks for itself.	The question addresses the intended scope of the 1970 lawsuit, which the City has affirmatively placed in issue thereby waiving associated privileges. Reilly has demonstrated substantial need for obtaining this information. Any privileges that may have been associated with RTC Exhibit 85 have been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions pertaining to the contents of the document may not now be blocked by privilege claims. Also, the negotiations between the City and Republic Creosote were not confidential, therefore the witness should be compelled to answer the question.
	MR. SCHWARTZBAUER: I am asking him whether it was accurate.		
	MR. POPHAM: I don't think I would respond to questions about the document which is a privileged document of the City.		

APPENDIX A

CITATIONS TO DEPOSITION QUESTIONS RELATING TO SCOPE OF THE 1970
LAWSUIT OBJECTIONS THERETO AND REASONS ANSWERS ARE NOT PRIVILEGED

DEPOSITION OF DALE WIKRE:

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
68:1-68:22	MR. SCHWARTZBAUER: Well, you previously testified, Mr. Wikre, that you had an understanding that the lawsuit that was commenced in 1970 related only to surface water problems, and I guess I would like to ask you how you know that? How do you know that?	MR. SHAKMAN: When that question was asked a few minutes ago I advised the witness not to answer to the extent that he has to disclose confidential communications with the attorneys for the State. He does not appear to recollect specifically such conversations, but if in general you believe that your answer to that would be based on such conversations or if you believe it is based in part on such conversations and you can't segregate those out, I would again instruct you not to answer, otherwise you may answer.	The question addresses the intended scope of the 1970 lawsuit, which the State has affirmatively placed in issue thereby waiving associated privileges. Reilly is seeking to determine the factual basis for Mr. Wikre's statement. Mr. Wikre has offered via his own affidavit testimony to the court on the issue of the scope of the 1970 lawsuit. See Wikre Affidavit, June 19, 1978, Appendix 27 to Schwartzbauer Affidavit of April 20, 1984.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	MR. WIKRE: Well, I don't have a recollection of coming to that conclusion through the conversations of a specific person. I may have come to that through conversations with attorneys so I guess I won't be answering it.		
133:8-133:25	MR. SCHWARTZBAUER: Why would you want that to be stricken [statement in RTC Exhibit 287 which states: "This proposal [for additional engineering studies as may be necessary and a program of appropriate mitigative measures] should be developed for consideration by the 1977 Legislative session."]?	MR. SHAKMAN: If you can recall at that time.	The question addresses the intended scope of the 1970 lawsuit, which the State has affirmatively placed in issue thereby waiving associated privileges. Additionally, any privilege that may be associated with the information contained in RTC Exhibit 287 has been waived by the voluntary disclosure of that document by plaintiffs to counsel for Reilly.
	MR. WIKRE: I probably would need some help on when the Agency would have amended its complaint against Reilly Tar, if that was before or after or around this period of time.		
	MR. SCHWARTZBAUER: The complaint was amended in 1978.	MR. SHAKMAN: I guess I would also caution you in answering that, the answers given to you in confidence by communications for the State don't answer.	
	MR. WIKRE: I would have to think that it was something that the Attorney General's staff may have indicated somehow.		

DEPOSITION OF DALE WIKRE:

APPENDIX A (continued)

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
-------------------------	----------------	-----------	--

MR. SCHWARTZBAUER: Does that mean pursuant to Mr. Shakman's instructions you can't answer my question?

MR. WIKRE: Yes.

APPENDIX A

CITATIONS TO DEPOSITION QUESTIONS RELATING TO THE SCOPE OF THE 1970 LAWSUIT,
OBJECTIONS THERETO AND REASONS ANSWERS ARE NOT PRIVILEGED

DEPOSITION OF CLARENCE A. JOHANNES:

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
128:4-128:9	MR. WAHOSKE: Do you recall what was said at this meeting referred to as 4-23-70, with the City concerning ground-water pollution [as reflected in RTC Exhibit 37]?	MR. COYNE: I would object and instruct the witness not to answer for the reasons previously stated.	Any privileges associated with RTC Exhibit 37 have been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions pertaining to the meeting which is referenced in the document may not now be blocked by privilege claims. The question also addresses the scope of the 1970 lawsuit which the State has affirmatively placed in issue, thereby waiving associated privileges.
170:12-171:3	MR. WAHOSKE: Let me refer you, Mr. Johannes, to the third sentence [of RTC Exhibit 20]. It begins with the "however" right there in the middle. It says, "However, it is necessary to verify the plant's closing and the extent to which air pollution and water pollution problems remain after such closing to enable proper distribution of the pending lawsuit against the company." Does that indicate to you that the closing of the plant -- did that indicate to you, when you received it that the closing of the plant would not		The privilege associated with RTC Exhibit 20 has been waived by the voluntary disclosure of the document by the plaintiffs to counsel for Reilly. Therefore, questions pertaining to matters which are reflected in the document may not now be blocked by privilege claims. The question also addresses the intended scope of the 1970 lawsuit which the State has affirmatively placed in issue, thereby waiving associated privileges.

DEPOSITION OF CLARENCE A. JOHANNES:

APPENDIX A (continued)

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
-------------------------	----------------	-----------	--

moot the issues involved in
the lawsuit?

MR. COYNE: I would object to
the question, the reliance on
the document to refresh your
recollection as to what
occurred at the time, and the
legal conclusion with regard
to mooting the lawsuit. So I
would instruct you not to
answer the question as asked.

APPENDIX A

CITATIONS TO DEPOSITION QUESTIONS RELATING TO SCOPE OF THE 1970
LAWSUIT OBJECTIONS THERETO AND REASONS ANSWERS ARE NOT PRIVILEGED

DEPOSITION OF EDWARD M. WIIK:

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
66:7-66:25	MS. COMSTOCK: Is it your understanding that that [the evaluation of air and water pollution problems at the Reilly site requested in RTC Exhibit 167] is what Mr. Lindall is referring to [in RTC Exhibit 39, PCA Board meeting minutes of 12/31/71, where Lindall states the agency still is concerned about the extent to which soil on company property is saturated with creosote, and desires to evaluate conditions and have them corrected before the company vacated the property]?	MR. SHAKMAN: Objection. Mr. Wiik, to the extent you can answer that question from what Mr. Lindall said at public meetings or other meetings that were not confidential you are free to do so. To the extent you are answering it from meetings that you had with Mr. Lindall in confidence, those would be protected by the attorney-client privilege and I would ask you not to draw on those if you find that necessary.	Any privileges that may have been associated with RTC Exhibit 167 have been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, the witness should be allowed to use the document to refresh his recollection and questions pertaining to matters discussed in the document may not now be blocked by privilege claims.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
-------------------------	----------------	-----------	--

MR. WIIK: My recollection is I don't recall and the other document that you presented here [RTC Exhibit 167] you indicated was a privileged document where he requested that I do it.

MR. SHAKMAN: If you are just recalling from that document then I instruct you not to answer.

MR. WIIK: My attorney says don't answer it.

APPENDIX A

CITATIONS TO DEPOSITION QUESTIONS RELATING TO THE SCOPE OF THE 1970 LAWSUIT,
OBJECTIONS THERETO AND REASONS ANSWERS ARE NOT PRIVILEGED

DEPOSITION OF HARVEY MCPHEE:

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
117:11-117:21	MR. SCHWARTZBAUER: At that meeting, [of State officials, City officials, and counsel for the State and the City, as reflected in RTC Exhibit 37] Mr. McPhee, did the City inquire as to what the Pollution Control Agency would do to prevent the surface and ground water pollution?	MR. POPHAM: I am going to object to questions about the conversation at the meeting. I think Exhibit 37 indicates that the purpose of the meeting was the contemplation of legal action and deals with privilege as to that meeting.	Any privilege that may have been associated with RTC Exhibit 37 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore questions relating to the meeting which is reflected in the document may not now be blocked by privilege claims. The question also relates to the intended scope of the 1970 lawsuit which the City has affirmatively placed in issue thereby waiving associated privileges.
	MR. SCHWARTZBAUER: Are you instructing him not to answer?	MR. POPHAM: Yes.	
150:1-150:5	MR. SCHWARTZBAUER: Why did you write this letter [RTC Exhibit 22] Mr. McPhee?	MR. POPHAM: That would be objected to as to work product. It's in the context of litigation. MR. COYNE: Join in the objection.	Any privilege that may have been associated with RTC Exhibit 22 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore questions pertaining to the document may not now be blocked by privilege claims.

DEPOSITION OF HARVEY MCPHEE:

APPENDIX A (continued)

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
150:7-151:3	MR. SCHWARTZBAUER: Then I will go on to another exhibit, Mr. McPhee. This is Reilly Tar Exhibit 23, previously marked Mr. McPhee. Can you identify that for us? . . . I guess the question before you, Mr. McPhee, is can you identify that.	MR. COYNE: Ed, I object to this document for the same reasons as I have objected to the previous document, Reilly Tar Exhibit Number 22, and would ask that the document not be included in the record as a privileged document. MR. POPHAM: Other than identification of the communication, we would object especially as to what gave rise to it or what the purpose of the letter was and that sort of thing as work product.	Any privilege that may have been associated with RTC Exhibit 23 has been waived by voluntary disclosure of the document by the plaintiffs to counsel for Reilly. Therefore, questions relating to the document may not now be blocked by privilege claims. The substance of this communication from Mr. McPhee to Mr. Lindall is also revealed in RTC Exhibit 182, which was voluntarily disclosed by plaintiffs to counsel for Reilly thereby waiving any privileges that may have attached to the communication.

APPENDIX B

CITATIONS TO DEPOSITION QUESTIONS RELATING TO THE HOLD HARMLESS AGREEMENT,
OBJECTIONS THERETO AND REASONS ANSWERS ARE NOT PRIVILEGED

DEPOSITION OF ROLFE A. WORDEN:

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
20:7-20:8	MR. SCHWARTZBAUER: What was the purpose for the meeting [with Van de North on or the day before June 15, 1973, as reflected in RTC Exhibit 34]?	MR. POPHAM: That would be objected to.	Any privilege that may have been associated with RTC Exhibit 34 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions pertaining to the meeting reflected in the document may not now be blocked by privilege claims. There was no common enterprise between the City and State after April 1972 when the City agreed to take over the property as is and assumed some degree of clean-up responsibility. The City and State from that date on no longer shared the same interests in the litigation. The information sought by this question is also disclosed in RTC Exhibit 85 which was voluntarily produced by plaintiffs to counsel for Reilly, thereby waiving any associated privileges. See RTC Exhibit 85, pp. 10-11.
20:10-20:12	MR. SCHWARTZBAUER: What was said [at that meeting with Van de North]?	MR. POPHAM: That would be objected to. MR. COYNE: Join in the objection.	Any privilege that may have been associated with RTC Exhibit 34 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions pertaining to the meeting reflected in the document may not now be blocked by privilege claims. There was no common enterprise between the City and State after April 1972 when the City agreed to take over the property

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
20:17-21:17	MR. SCHWARTZBAUER: By this time did the Pollution Control Agency know that Saint Louis Park had taken over the responsibility for soil and water contamination?	MR. POPHAM: I will object to any response to the question that would call for either privileged or work product matter. I think this is a question, like the earlier question, if there is something from which you can answer the question that is not objectionable then you should answer it but you should not involve either of those items.	as is and assumed some degree of clean-up responsibility. The City and State from that date on no longer shared the same interests in the litigation. The information sought by this question is also disclosed in RTC Exhibit 85 which was voluntarily produced by plaintiffs to counsel for Reilly, thereby waiving any associated privileges that may have attached. See RTC Exhibit 85, pp. 10-11.
	MR. WORDEN: I would have to state for the record that any answer to that question would necessarily be predicated on work product and privileged communication.	MR. COYNE: I would join in the objection and further object that there is no foundation for the question.	There was no common enterprise or joint defense between the City and State after April 1972 when the City agreed to take over the property as is and assumed some degree of clean-up responsibility. The City and State from that date on no longer shared the same interests in the litigation. Furthermore, the information sought is not confidential or privileged standing on its own. Also, the City has affirmatively placed in issue the meaning of the Hold Harmless Agreement, thereby waiving associated privileges. Reilly has also demonstrated good cause for obtaining work product material.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
21:19-21:23	MR. SCHWARTZBAUER: Had you told the Pollution Control Agency that Saint Louis Park had taken over responsibility for soil and water contamination?	MR. POPHAM: Objection. MR. COYNE: Join in the objection.	There was no common enterprise or joint defense between the City and State in 1973 after the signing of the Hold Harmless Agreement. Furthermore, the information sought is not privileged standing on its own. Also, the City has affirmatively placed in issue the meaning of the Hold Harmless Agreement thereby waiving associated privileges.
21:25-22:7	MR. SCHWARTZBAUER: Looking at the third paragraph, [of RTC Exhibit 34] Van de North says to you: "To allow time for gathering further information and for submitting a proposal, the City of Saint Louis Park will attempt to delay the closing of its real estate transaction with Reilly until August 15, 1973." Did the State ask you to delay the closing?	MR. POPHAM: Objection. MR. COYNE: Join in the objection.	Any privilege that might have been associated with RTC Exhibit 34 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions pertaining to the meeting reflected in the document may not now be blocked by privilege claims. There was no common enterprise between the City and State after April 1972 when the City agreed to take over the property as is and assumed some degree of clean-up responsibility. The City and State from that date on no longer shared the same interests in the litigation.
22:9-22:12	MR. SCHWARTZBAUER: What difference did it make to the State as to whether the closing was delayed or not?	MR. POPHAM: Objection. MR. COYNE: Join in the objection.	Any privilege that may have been associated with RTC Exhibit 34 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions pertaining to the meeting reflected in the document may not now be blocked by privilege claims.
22:14-22:19	MR. SCHWARTZBAUER: Was there any suggestion on Van de North's part or your part that you meet with Reilly to		Any privilege that might have been associated with RTC Exhibit 34 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	discuss actions which were deemed necessary with respect to the site?	MR. POPHAM: Objection. MR. COYNE: Join in the objection.	Therefore, questions pertaining to the meeting reflected in the document may not now be blocked by privilege claims. There was no common enterprise or joint defense between the City and State after April 1972 when the City agreed to take over the property as is and assumed some degree of clean-up responsibility. The City and State from that date on no longer shared the same interests in the litigation.
22:21-23:6	MR. SCHWARTZBAUER: Among other things, the letter says in the second paragraph: "We will not be in a position to consider a dismissal of our complaint against Reilly until we have received and reviewed a proposal from the City of Saint Louis Park for eliminating potential pollution hazards at the Republic Creosote site." Now, did Mr. Van de North say anything about a necessity to obtain a proposal from Reilly for eliminating pollution hazards?	MR. POPHAM: Objection. MR. COYNE: Join in the objection.	Any privilege that may have been associated with RTC Exhibit 34 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions pertaining to the meeting reflected in the document may not now be blocked by privilege claims. There was no common enterprise or joint defense between the City and State after April 1972 when the City agreed to take over the property as is and assumed some degree of clean-up responsibility. The City and State from that date on no longer shared the same interests in the litigation.
24:19-25:5	MR. SCHWARTZBAUER: And indeed had the State of Minnesota expressed any objection to accepting Saint Louis Park as the one that would do the work rather than Reilly?	MR. POPHAM: I think that I am going to object to the	There was no common enterprise or joint defense between the City and State in 1973 after the signing of the Purchase Agreement and Hold Harmless Agreement. The City and the State no longer shared the same interests in the litigation. Also, the City has affirmatively placed in issue the meaning and scope of the

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
		form of the question to the State accepting the City as representing a legal conclusion. I think that the question of the witness should clarify statements made between himself and Mr. Reiersgord as against going to conclusions. So I would object to the form of the question as propounded.	Hold Harmless Agreement, thereby waiving associated privileges.
		MR. COYNE: I would join in the objection.	
25:25-26:3	MR. SCHWARTZBAUER: And in fact in the various conversations that you had with the State, as you mentioned earlier, had they indicated to you that they would do that [deliver a dismissal for the State Court lawsuit]?		Communications between the City and State staking out a position to be taken in negotiations over the Purchase Agreement and other aspects of settlement are not privileged, inasmuch as there was no intention that the subject matter of such communication remain confidential.
		MR. POPHAM: That would be objected to.	
55:25-56:1	MR. SCHWARTZBAUER: What was said [in your discussions with representatives of the City of St. Louis Park with regard to RTC Exhibit 71, the Hold Harmless Agreement]?		The City has affirmatively placed in issue the meaning and scope of the Hold Harmless Agreement thereby waiving associated privileges. There was no common enterprise or joint defense between the City and State after April 1972 when the City agreed to take over the property as is and assumed some degree of clean-up responsibility. The City and State from that date on no longer shared the same interests in the litigation.
		MR. POPHAM: That would be objected to.	

APPENDIX B

CITATIONS TO DEPOSITION QUESTIONS RELATING TO THE HOLD HARMLESS AGREEMENT,
OBJECTIONS THERETO AND REASONS ANSWERS ARE NOT PRIVILEGED

DEPOSITION OF WAYNE POPHAM:

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
56:10-56:15	MR. SCHWARTZBAUER: But is it your memory that on or about June 19, 1973 there was still a certain amount of uncertainty as to precisely what the Pollution Control Agency would demand with respect to this property?	MR. HINDERAKER: Same objections. MR. COYNE: Join in the objection.	There was no common enterprise or joint defense in 1973 after the execution of the Purchase Agreement and Hold Harmless Agreement. The City and State no longer shared the same interests in the litigation. The City has also affirmatively placed in issue the meaning and scope of the Hold Harmless Agreement thereby waiving associated privileges. The fact that there was uncertainty in June 1973 about what clean-up measures the PCA would demand is also set forth in RTC Exhibit 85 to counsel for Reilly. See RTC Exhibit 85, pp. 10-11. By the voluntary disclosure of the document containing the assertion, the plaintiffs waived any privileges that may have existed.

APPENDIX B

CITATIONS TO DEPOSITION QUESTIONS RELATING TO THE HOLD HARMLESS AGREEMENT,
OBJECTIONS THERETO AND REASONS ANSWERS ARE NOT PRIVILEGED

DEPOSITION OF DALE WIKRE:

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
85:3-85:7	MR. SCHWARTZBAUER: Did you help Mr. Van de North write this letter [RTC Exhibit 34]?	MR. SHAKMAN: I would object on the grounds of attorney-client communication and instruct the witness not to answer.	The privilege associated with RTC Exhibit 34 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore questions relating to the document may not now be blocked on grounds of privilege.
118:25-119:13	MR. SCHWARTZBAUER: At the time of this newspaper article [RTC Exhibit 93, dated 10/21/74] was it your understanding that the Hold Harmless Agreement applied to the problems that are discussed in this newspaper article?	MR. SHAKMAN: I would caution the witness, before answering that, not to disclose any information interpreting that agreement that might have been given to attorneys for the State. If he is capable of associating his understanding of communications of that nature that he may have been privy to, he may answer.	The newspaper article, RTC Exhibit 93, in the second to the last paragraph states that Mr. Wikre admits that Reilly, the former owners, are held harmless in any future legal action. Even if his understanding of the Hold Harmless Agreement was gleaned from conversations with attorneys from the State, the fact that the witness disclosed his understanding of the Hold Harmless Agreement to the press confirms that it was not intended to be confidential.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	MR. WIKRE: I believe that at this point in time there would have been communications with the attorneys in this instance so I shouldn't answer.		
120:1-121:6	MR. SCHWARTZBAUER: Well, did your understanding concerning the meaning of the Hold Harmless Agreement come from any communications with the attorneys for the City?		The newspaper article, RTC Exhibit 93, in the second to the last paragraph states that Mr. Wikre admits that Reilly, the former owners, are held harmless in any future legal action. Even if his understanding of the Hold Harmless Agreement was gleaned from conversations with attorneys from the State, the fact that the witness disclosed his understanding of the Hold Harmless Agreement to the press confirms that it was not intended to be confidential.
	MR. WIKRE: It may have in part come from communications with them.	MR. SHAKMAN: My objection does not extend for the witness' clarification, to communications for attorneys from the City between the time of the execution of the hold harmless and the time of the exhibit before us, October 24, 1974. So to that extent you may answer, but attorneys from the Attorney General's staff instruction holds in regard to them.	
	MR. WIKRE: My memory doesn't allow me to differentiate between where I would have gotten all the information to come to whatever conclusion I have at that point in time.		
	MR. SCHWARTZBAUER: So your inability to answer my		

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	question is simply based on the fact that you think that your understanding may have come from attorneys for the Pollution Control Agency?		
	MR. WIKRE: It comes from the fact that over all the years I have had a great deal of communication with a great many people and much of that, a significant amount of that, was with attorneys since this was a subject of litigation. I am sure that at various points in time the Hold Harmless Agreement was discussed and I can't determine how I came to the knowledge I might have had that point in time, and in fact I am not exactly sure what my knowledge would have been at this particular point in time compared to all the conversations since then up until now.		
135:23-136:13	MR. SCHWARTZBAUER: Well, I am going to read various parts of this [RTC Exhibit 111] to you and ask you about it. Continuing from where I left off just a minute ago the memo says, "Popham feels it may be very difficult to include Reilly Tar & Chemical back into this subject." Did		Any privilege that may have been associated with RTC Exhibit 111 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions pertaining to the document and the meeting reflected in the document may not now be blocked by privilege claims.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	Mr. Popham say that at a meeting you attended?	MR. SHAKMAN: I would object and instruct the witness not to answer. I would note, for purposes of the record, the document is dated October 7, 1977 and at that time the State and the City shared a common interest in pursuing the matter of the liability of the Reilly Tar & Chemical Company for the subject contamination, and accordingly communications between Mr. Popham and Mr. Donahue, attorney for the Pollution Control Agency and their respective clients, would in our opinion be privileged.	
161:22-162:11	MR. SCHWARTZBAUER: Skipping down to the fifth line, [of RTC Exhibit 290] it reads, "It will be a situation of liability and then if the judge says Saint Louis Park you bought liability then we are in a position to go to legislature with this." Can you tell me who said that?	MR. SHAKMAN: Will you wait a minute, Mr. Wikre? I too am having difficulty discerning who was saying this, but assuming it is Mr. Heffern who at that time would have been an official of the Pollution Control Agency in a meeting with his attorney and other state representatives, it would appear to me that	Any privilege that may have been associated with RTC Exhibit 290 has been waived by the voluntary disclosure of the document by plaintiffs to Reilly. Therefore, questions pertaining to the document and the meeting reflected in the document may not now be blocked by privilege claims.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
		that's discussion of the planning and conduct for the lawsuit against Reilly Tar & Chemical Company and as such is a privileged communication and I will instruct the wit- ness not to answer that question.	

APPENDIX C

CITATIONS TO DEPOSITION QUESTIONS RELATING TO THE PURCHASE AGREEMENT,
OBJECTIONS THERE TO AND REASONS ANSWERS ARE NOT PRIVILEGED

DEPOSITION OF ROBERT J. LINDALL:

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
140:24-141:7	MR. SCHWARTZBAUER: Did you know in 1971 or 1972 before you left the Pollution Control Agency that an agreement of this sort [Purchase Agreement, RTC Exhibit 31] was going to be signed by St. Louis Park and Reilly?	MR. COYNE: Objection. The form of the question necessarily intertwines privileged and non-privileged communications, attorney work product and on that basis I object and instruct the witness not to answer.	Any privilege that may have existed with respect to this inquiry was waived by Mr. Lindall when he disclosed to the PCA Board in a public meeting his knowledge of the sale of the property to the City. See RTC Exhibit 18. Furthermore, Mr. Lindall stated in his June 21, 1978 Affidavit that he reviewed the Reilly file and made a factual determination that the State did not settle the state court lawsuit. Reilly is entitled to inquire of the witness the factual basis for that assertion.
141:10-141:15	MR. SCHWARTZBAUER: Although you didn't see the document until recently did you know before you left the PCA that an agreement for the purchase of real estate had been executed by St. Louis Park and by Reilly?	MR. COYNE: I object for the reasons previously stated and instruct the witness not to respond.	Mr. Lindall stated in his June 21, 1978 Affidavit that he reviewed the Reilly file and made a factual determination that the State did not settle the state court lawsuit. Reilly is entitled to inquire of the witness the factual basis for that assertion.

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
141:18-142:10	MR. SCHWARTZBAUER: I call your attention to Paragraph 9, [of RTC Exhibit 31] which is entitled "Current Litigation." And among other things, the document says that, "It is understood that this agreement represents a means of settling the issues involved in <u>State of Minnesota, by the Minnesota Pollution Control Agency and the City of St. Louis Park, Plaintiffs, vs. Reilly Tar and Chemical Corporation, Defendant.</u> And the document also says that, "It is understood that the City of St. Louis Park will deliver dismissals with prejudice and without cost to Defendant executed by itself and by the Plaintiff State of Minnesota at closing." Were you aware before you left the PCA that St. Louis Park had agreed to do that?	MR. COYNE: I object. The question necessarily raises the same objections earlier voiced and for that reason I must instruct the witness not to answer.	Any privilege that may have existed with respect to this inquiry was waived by the voluntary disclosure of RTC Exhibit 85 by plaintiffs to counsel for Reilly. That document states that both the City and the PCA expected to dismiss the suit at the time of closing. <u>See</u> RTC Exhibit 85, pgs. 9-10.
142:12-142:16	MR. SCHWARTZBAUER: Do you know what basis the City of St. Louis Park had for believing that it would be able to deliver a dismissal		Any privilege that may have existed with respect to this inquiry was waived by voluntary disclosure of RTC Exhibit 85 by plaintiffs to counsel for Reilly. That document states that both the City and the

DEPOSITION OF ROBERT J. LINDALL:

APPENDIX C (continued)

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	executed by the State of Minnesota?	MR. COYNE: I object for the same reasons and in addi- tion, there is no foundation for the question.	PCA expected to dismiss the suit at the time of closing. See RTC Exhibit 85, pgs. 9-10.

APPENDIX C

CITATIONS TO DEPOSITION QUESTIONS RELATING TO THE PURCHASE AGREEMENT,
OBJECTIONS THERETO AND REASONS ANSWERS ARE NOT PRIVILEGED

DEPOSITION OF ROLFE A. WORDEN:

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
10:24-11:1	MR. SCHWARTZBAUER: What was your understanding of the words "as is" [in the Purchase Agreement, RTC Exhibit 31]?	MR. POPHAM: That would be objected to.	The question does not seek to elicit trial preparation material. Even if the question was construed as eliciting information protected by the work product doctrine, Reilly has demonstrated substantial need and substantial need for obtaining the information. The witness, a lawyer, is also qualified to give a legal conclusion. The City has taken the position that the "as is" clause in the Purchase Agreement does not and was not intended to apply to the contamination alleged in this suit. Reilly should be allowed to ask the relevant witnesses, the lawyers who negotiated and drafted this agreement, what they understood the scope of the agreement to be.
11:3-11:9	MR. SCHWARTZBAUER: The agreement [RTC Exhibit 31] reads in part: "The buyer is acquired said premises in an as is condition except for the provisions in Number 5 of this Agreement and that this as is includes any and all conditions of soil and water impurities and soil conditions." What was your understanding of that phrase?	MR. POPHAM: Same objection.	The question does not seek to elicit trial preparation material. Even if the question was construed as eliciting information protected by the work product doctrine, Reilly has demonstrated substantial need and substantial need for obtaining the information. The witness, a lawyer, is also qualified to give a legal conclusion. The City has taken the position that the "as is" clause in the Purchase Agreement does not and was not intended to apply to the contamination alleged in this suit. Reilly should be allowed to

DEPOSITION OF ROLFE A. WORDEN:

APPENDIX C (continued)

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
-------------------------	----------------	-----------	--

ask the relevant witnesses, the lawyers
who negotiated and drafted this
agreement, what they understood the scope
of the agreement to be.

APPENDIX C

CITATIONS TO DEPOSITION QUESTIONS RELATING TO THE PURCHASE AGREEMENT,
OBJECTIONS THERETO AND REASONS ANSWERS ARE NOT PRIVILEGED

DEPOSITION OF WAYNE POPHAM:

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
22:21-22:25	MR. SCHWARTZBAUER: At the time you signed this complaint [RTC Exhibit 8] and filed it, had you seen the files of either Saint Louis Park or the Pollution Control Agency regarding alleged groundwater pollution?	MR. HINDERAKER: Same objection. [Objection previously stated was work product. See page 7 of Popham deposition transcript].	This question relates to the scope of the settlement provided for in the Purchase Agreement, and therefore the scope of the 1970 lawsuit which the City has affirmatively placed in issued, thereby waiving any associated privileges. Reilly has also demonstrated substantial need for obtaining this information.
27:14-27:17	MR. SCHWARTZBAUER: And what was your understanding of the meaning of the phrase that, "The company sells and the City buys in an as is condition [as stated in RTC Exhibit 61]?"	MR. HINDERAKER: Same objection.	Reilly has demonstrated substantial need for obtaining this information. The witness, a lawyer, is also qualified to give a legal conclusion. The City has taken the position that the "as is" clause in the Purchase Agreement does not and was not intended to apply to the contamination alleged in this suit. Reilly should be allowed to ask the relevant witnesses, the lawyers who negotiated and drafted this agreement, what they understood the scope of this agreement to be.
49:23-49:25	MR. SCHWARTZBAUER: Well, what happened to cause the City to back off from that proposal [that Reilly hold the City harmless from any		Reilly has demonstrated substantial need for obtaining this information. Additionally, any privilege that may have been associated with this information has been waived by the voluntary disclosure

DEPOSITION OF WAYNE POPHAM:

APPENDIX C (continued)

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	and all claims which might arise relative to soil and water impurities]?	MR. HINDERAKER: Same objection.	of RTC Exhibit 85, which purports to set forth reasons why the City "backed off" from its proposal that Reilly hold the City harmless. <u>See</u> RTC Ex. 85, pgs. 8-9. The answer to the question is not protected by the work product doctrine in that it does not seek trial preparation materials for the current litigation.
50:2-50:12	MR. SCHWARTZBAUER: Isn't it clear as we sit here, Wayne, that the thing that intervened between the July 30 offer in which the City was asking to be indemnified and the February 23rd proposal, in which the City was not asking to be indemnified, was the letter from Lindall dated December 17 and the memo from Larry Anderson referring to groundwater pollution and the fact that the Pollution Control Agency would not require excavation of the soil, isn't that what occurred?	MR. HINDERAKER: Same objection, also argumentative.	Reilly has demonstrated substantial need for obtaining this information. Additionally, any privilege that may have been associated with this information has been waived by the voluntary enclosure of RTC Exhibit 85, which sets forth the reasons why the City "backed off" from its proposal that Reilly hold the City harmless. <u>See</u> RTC Ex. 85, pgs. 6-9.
50:14-50:18	MR. SCHWARTZBAUER: Isn't it a fact that it was the Pollution Control Agency memo sent to you by Mr. Lindall which triggered the City into changing its position on the as is clause?	MR. HINDERAKER: Same objection.	Reilly has demonstrated substantial need for obtaining this information. Additionally, any privilege that may have been associated with this information has been waived by the voluntary disclosure of RTC Exhibit 85, which sets forth the receipt of the PCA memo and subsequent change in the City's position. <u>See</u> RTC Exhibit 85, pgs. 7-9.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
51:17-51:21	MR. SCHWARTZBAUER: Again, I call your attention to the fact that this proposal [RTC Exhibit 91] does not contain any requirement that the company indemnify the City. Can you tell us how that proposal came to disappear from the City's offer?	MR. HINDERAKER: Same objection.	Reilly has demonstrated substantial need for obtaining this information. Additionally, any privilege that may have been associated with this information has been waived by the voluntary disclosure of RTC Exhibit 85 which sets forth the City's actions and intention with respect to the purchase agreement negotiations. <u>See</u> RTC Exhibit 85, pgs 7-9.
54:2-54:8	MR. SCHWARTZBAUER: The paragraph [9 of RTC Exhibit 31] says, "It is understood that the City of Saint Louis Park will deliver dismissals with prejudice and without cost to Defendant executed by itself and the Plaintiff State of Minnesota at closing." At about this time did you believe that the State of Minnesota would dismiss the lawsuit?	MR. HINDERAKER: Same objections.	Reilly has demonstrated substantial need for obtaining this information. Additionally, any privilege that may have been associated with this information has been waived by the voluntary disclosure of RTC Exhibit 85, which sets forth Mr. Popham's belief that the suit would be dismissed by the City and State at closing. <u>See</u> RTC Ex. 85, pgs. 9-10.
54:10-54:14	MR. SCHWARTZBAUER: Had you talked to the State of Minnesota and had the State of Minnesota advised you that in fact it would be dismissing the litigation when the sale closed?	MR. HINDERAKER: Same objections. MR. COYNE: I join in the objection.	The information sought was not intended to be secret or confidential. The information sought deals with the position of a party in negotiations which would be conveyed to a third party, Reilly, during the course of negotiations. This information was also at least partially disclosed by the voluntary disclosure of RTC Exhibit 85. <u>See</u> Exhibit 85, pg. 10.

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
72:21-73:7	MR. SCHWARTZBAUER: If you need to refer back any further please do so. You will note that on Page 6 [of RTC Exhibit 85] you start discussing the City's first offer to purchase and then I am directing your attention to the next page where you discuss September and October and the fact that there were few contacts. I will read on, "The company vigorously rejected any proposal that the property required excavation because of the groundwater. The company continued to refuse to consider any sale of the property other than on an as is basis." Was that an accurate statement?	MR. HINDERAKER: Same objections.	Any privilege that may have been associated with RTC Exhibit 85 has been waived by the voluntary disclosure of the document by the plaintiffs to counsel for Reilly. Therefore, questions relating to the contents of the document may not now be blocked by privilege claims. The information sought is also not secret or confidential.
73:9-73:15	MR. SCHWARTZBAUER: Down under the topic, "Cleanup Operations," just before the quote you say, "The following question reflects the concern that the City had at that time about any possible groundwater problems." Was the City concerned in November of 1971 about groundwater problems?	MR. HINDERAKER: Same objection.	Any privilege that may have been associated with RTC Exhibit 85 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions relating to the contents of the document may not now be blocked by privilege claims. Further, the information sought was not secret or confidential, as it was expected that the information would be disclosed to Reilly during the course of negotiations.
74:10-74:14	MR. SCHWARTZBAUER: Was it your understanding, Wayne, at the time that the City agreed		Any privilege that may have been associated with RTC Exhibit 85 has been waived by the voluntary disclosure of the docu-

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	to purchase the property from Reilly, that the Pollution Control Agency would consider the matter closed [as reflected in RTC Exhibit 85]?	MR. HINDERAKER: Same objections.	ment by plaintiffs to counsel for Reilly. Therefore, questions relating to the contents of the document may not now be blocked by privilege claims.
76:15-76:25	MR. SCHWARTZBAUER: I am interested in your sentence [in RTC Exhibit 85] that reads, "Based upon the information then available and the positions then being taken by the various parties, the City Council decided to drop its requirements of indemnity and to negotiate for the purchase of the property as is." Can you remember, and if you do remember please tell us, what positions were being taken by what parties which caused the City Council to drop its requirement of indemnity?	MR. HINDERAKER: Same objections. MR. COYNE: I join in the objection.	Any privilege that may have been associated with RTC Exhibit 85 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions relating to the contents of the document may not now be blocked by privilege claims.
77:2-77:9	MR. SCHWARTZBAUER: [In RTC Exhibit 85 on] page 10 you say, "At the time of this agreement," and you are referring to the purchase agreement, "both the City and the Pollution Control Agency expected to dismiss the suit at the time of closing which was set for		Any privilege that may have been associated with RTC Exhibit 85 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions relating to the document may not now be blocked by privilege claims. The answer to the question is also not protected by the work product doctrine in that it does not seek current trial preparation materials.

DEPOSITION OF WAYNE POPHAM:

APPENDIX C (continued)

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	October 7, 1972." Was that a factual statement?	MR. HINDERAKER: Same objection. MR. COYNE: Join in the objection.	

APPENDIX D

APPENDIX D

CITATIONS TO DEPOSITION QUESTIONS RELATING TO THE SETTLEMENT,
OBJECTIONS THERETO AND REASONS ANSWERS ARE NOT PRIVILEGED

DEPOSITION OF ROBERT J. LINDALL:

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
69:24-69:25	MR. SCHWARTZBAUER: Were you aware at that time [December 16, 1970 PCA meeting with officials of Reilly as reflected in RTC Exhibit 12] on the basis of information acquired at the meeting or anyplace else that Reilly and the City were negotiating for a possible sale of the property?	MR. COYNE: I would object to the question and direct the witness not to answer for the same reason previously stated [privilege and work product].	Information received by the witness on the negotiations for sale of the property would not have been a confidential or secret communication, therefore, it would not be privileged.*

* With respect to all of the questions asked of Mr. Lindall in Appendix D, Reilly asserts that the answers to the questions are not privileged because of waiver. Both in 1978 in the State court suit and again in the spring of 1983 in this Court, Mr. Lindall offered via his own affidavits sworn testimony to the Court on the issue of the settlement of the 1970 lawsuit. See Lindall affidavit, June 21, 1978, Exhibit E to Reiersgord affidavit of June 23, 1983; and Lindall affidavit, April 20, 1983, on file herein. In his 1978 affidavit, Lindall explicitly stated that his testimony was made after he had reviewed the files and documents on the matter, including attorney notes. He thus testified both as to his own recollection, presumably refreshed by those documents, and as to his interpretation of those documents. When the affidavit of an attorney is submitted to the court on behalf of his client, which affidavit purports to be based on information received by him as an attorney for his client, any existing attorney-client privilege or work product assertion is waived. See Revised Memorandum in Support of Reilly Tar & Chemical Corporation's Renewed Motion for an Order Compelling Discovery, dated April 20, 1984, pages 54-57.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
71:4-72:2	MR. SCHWARTZBAUER: Let me hand you RTC Exhibit 14. That appears to be a letter from Gary R. Macomber to you dated July 14th, 1971. Have I correctly described it?	MR. COYNE: The objection by the State of Minnesota is that this document written between co-counsel or rather between counsel for Co-Plaintiffs is privileged. It falls within that category that we discussed at the outset of the deposition; documents inadvertently produced during the course of exchange of documents between the parties. We would ask that it not be marked as an exhibit, be returned to us. And would object to any inquiry concerning the letter, the communication between Co-Plaintiffs. And direct the witness not to answer any such questions.	Any privilege that may have been associated with RTC Exhibit 14 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions pertaining to the document may not now be blocked by privilege claims.
72:8-72:14	MR. SCHWARTZBAUER: The first sentence of Exhibit 14 says, "In light of your recent telephone call, we discussed this matter with Chris and Harvey and learned that the appraisers' report is due this week. What relevance to the litigation did an appraisers' report have?	MR. POPHAM: We will join in the position directed by Mr. Coyne. MR. COYNE: I object for the reasons earlier stated and direct the witness not to answer.	Any privilege that may have been associated with RTC Exhibit 14 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions pertaining to the document may not now be blocked by privilege claims.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
72:16-72:23	MR. SCHWARTZBAUER: The second paragraph [of Exhibit 14] says, "We also learned that the proposed date for shutting down the refining operation is August 31st, not July 1st, as I had earlier thought." My question is, of what relevance to the litigation was it that the refinery was to be shut down?	MR. COYNE: I object to the question and direct the witness not to answer it for the same reasons as earlier stated.	Any privilege that may have been associated with RTC Exhibit 14 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions pertaining to the document may not now be blocked by privilege claims. The question also relates to the scope of the 1970 litigation, which the State has affirmatively placed in issue thereby waiving associated privileges. The relevance of this information to the PCA and the City is also set forth in RTC Exhibit 85 which was voluntarily disclosed by plaintiffs to counsel for Reilly. See RTC Exhibit 85, p. 6. Any privileges which may have been associated with this information has been waived by the disclosure of that exhibit.
72:25-73:7	MR. SCHWARTZBAUER: The same paragraph says, "In light of this fact, the City would like to postpone making a decision as to the litigation until the latest practicable date." Now what relationship was there between the closing of the plant and making a decision as to the litigation?	MR. COYNE: I object and for the same reasons as earlier stated instruct the witness not to answer.	Any privilege that may have been associated with RTC Exhibit 14 has been waived by the voluntary disclosure of the document by the plaintiffs to counsel for Reilly. Therefore, questions pertaining to the document may not now be blocked by privilege claims. The question also relates to the scope of the 1970 litigation, which the State has affirmatively placed in issue thereby waiving associated privileges. The relevance of the closing of the plant to decisions on the litigation is set forth in RTC Exhibit 85, which was voluntarily disclosed by plaintiffs to counsel for Reilly thereby waiving any privileges which may have attached to this information. See RTC Exhibit 85, p. 6.

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
73:18-74:7	<p>On the first page [of RTC Exhibit No. 15, a letter from Thomas E. Reiersgord to your attention dated July 23, 1971,] note that Mr. Reiersgord tells you the following: "Perhaps you may not be aware that the company determined several months ago to close down their St. Louis Park plant and they are now in the process of doing so."</p> <p>"You may or may not know that the company has offered the entire 80 acres to the City, and that the City and the company are presently negotiating for the [purchase] of the property."</p> <p>Now, before you received that letter, Bob, did you know that the City and the company were negotiating for the [purchase] of the property?</p>		<p>The negotiations between the City and Reilly were not intended to be confidential or secret, therefore no privilege would attach to the information. Also, the privilege as to the State's knowledge of negotiations has been waived by the voluntary disclosure of RTC Exhibit 85. That exhibit documents discussions between the City and State concerning the negotiations. <u>See</u> RTC Exhibit 85, pgs. 6-10.</p>
74:9-74:22	MR. SCHWARTZBAUER: Okay. Let's go on to the second page. The letter says, "At any rate, it seems to me that the issues in the lawsuit are moot except for the possibility of the counterclaim by the company for damages by reason of the flooding by the City."	MR. COYNE: Object for the same reasons as earlier stated and advise the witness not to answer.	This question addresses the intended scope of the 1970 lawsuit which the State and the City have affirmatively placed in issue, thereby waiving associated privileges. Reilly has also demonstrated substantial need for obtaining this information.

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	When you got that letter, Bob, and read it did you agree with Mr. Reiersgord's statement that I just read to you, that the issues in the lawsuit are moot in view of the decision by St. Louis Park to purchase the property?	MR. COYNE: I object and advise the witness not to answer the question. It clearly elicits his opinion on the lawsuit against the company and its objective.	
74:23-75:5	MR. SCHWARTZBAUER: I am asking him for his understanding [that the issues in the lawsuit would be moot] at that time in 1971. Can you give us that, Bob?	MR. COYNE: I object and advise witness not to answer for the same reasons previously stated.	The question addresses the intended scope of the 1970 lawsuit which the State and City have affirmatively placed in issue, thereby waiving associated privileges. Reilly has also demonstrated substantial need for obtaining this information.
78:9-78:16	MR. SCHWARTZBAUER: The first paragraph [of Exhibit 16, letter dated July 30, 1971, from Gary Macomber to Thomas Reiersgord with copies to Robert Lindall and Chris Cherches] in the second sentence says, "In light of the pending negotiations between the City and Reilly Tar and Chemical Company, we will agree to the following action." I will stop there for a minute. What negotiations does that refer to.	MR. COYNE: I object on the basis of the objection is for	The information sought is not confidential or secret.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
		the same reasons previously stated. Instruct the witness not to answer.	
78:18-78:23	MR. SCHWARTZBAUER: At the time you got the letter [Exhibit 16], Bob, did you have an understanding as to what that sentence referred to in terms of pending negotiations?	MR. COYNE: Object to the question and direct the witness not to answer for the reasons sentence previously stated.	The information sought is not confidential or secret.
78:25-79:12	MR. SCHWARTZBAUER: The letter [Exhibit 16] also says, "We will ask the Clerk to strike the above-captioned case subject to reinstatement at the request of any counsel at any time." And then skipping several lines and dropping down to the last sentence, it says, "Should the City and the company fail to reach agreement in the pending negotiations the City will reinstate the matter on the trial calendar." Is that sentence that I just read consistent with your understanding with Mr. Reiersgord and Mr. Macomber?	MR. COYNE: I object insofar as the question includes counsel for the City and necessarily brings into issue privileged communications. And direct the witness not to answer.	The terms of a negotiated settlement which is sought by this question is not privileged information. Information is not privileged if it is understood that information communicated would be conveyed to others.

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
79:21-80:16	<p>MR. SCHWARTZBAUER: Let me ask you whether you had any conversations with Mr. Reiersgord concerning the striking of the case and its possible rein-statement at about that time?</p> <p>MR. LINDALL: My recollection is that Mr. Reiersgord advised me, as indicated by his letter of July 23rd, of his belief that there was no point in proceeding with the action because of the possible purchase of land by the City and/or the termination of operations by the company. I don't believe that there was an agreement between me and Mr. Reiersgord. He stated a position and was then for me to review that position as stated in the July 23rd letter and take such action as I thought appropriate based on that position.</p> <p>MR. SCHWARTZBAUER: Did you do that?</p> <p>MR. LINDALL: I think the letter of July 30th 1971, Exhibit 16, reflects that there had been discussion between Mr. Macomber and myself concerning what action should be taken.</p>		<p>Communications between the City and the State regarding negotiations and the sale of the property are not privileged because the City has placed in issue the scope of the Hold Harmless Agreement. The scope of the Hold Harmless can only be determined in light of all the negotiations and understandings that came before it concerning the sale of the property, the dismissal and the scope of the suit.</p>
	<p>MR. COYNE: I would again in-</p>	struct the witness not to	

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
		testify concerning communica- tions with Gary Macomber.	
80:18-80:22	MR. SCHWARTZBAUER: Were the communications with Gary Macomber in response to the letter you got from Reiersgord?	MR. COYNE: Again, I would object and ask the witness not to answer the question for the reasons previously stated.	Communications between the City and the State regarding negotiations and the sale of the property are not privileged because the City has placed in issue the scope of the Hold Harmless Agreement. The scope of the Hold Harmless can only be determined in light of all the negotiations and understandings that came before it concerning the sale of the property, the dismissal and the scope of the suit.
80:24-81:4	MR. SCHWARTZBAUER: Will this statement, i.e. "Should the City and the company fail to reach an agreement . . . the City will then reinstate the matter on the trial calendar." Was that consistent with your intention at the time?	MR. COYNE: I object for the reasons previously stated and direct the witness not to answer.	The terms of a negotiated settlement which is sought by this question is not privileged information. Information is not privileged if it is understood that the information communicated would be conveyed to others. Reilly has also demonstrated substantial need for obtaining this information.
81:6-81:10	MR. SCHWARTZBAUER: Was that statement ["Should the City the company fail to reach an agreement . . . the City will then reinstate the matter on the trial calendar."] consistent with your intention at the time?	MR. COYNE: Object for the reasons previously stated and instruct the witness not to answer.	The terms of a negotiated settlement which is sought by this question is not privileged information. Information is not privileged if it is understood that the information communicated would be conveyed to others. Reilly has also demonstrated substantial need for obtaining this information.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
81:12-81:23	MR. SCHWARTZBAUER: Was that statement ["Should the City and the company fail to reach an agreement . . . the City will then reinstate the matter on the trial calendar."] consistent with your personal understanding as to what would be done if the pending negotiations were not successful?	MR. COYNE: The State of Minnesota is constrained again to object to the question and direct the witness not to answer.	The terms of a negotiated settlement which is sought by this question is not privileged information. Information is not privileged if it is understood that the information communicated would be conveyed to others. Reilly has also demonstrated substantial need for obtaining this information.
83:24-84:4	MR. SCHWARTZBAUER: At about the time that this July 30th, 1971, letter [Exhibit 16] was written did you know that the City and Reilly were negotiating for a sale of the property as a method of settling the case?	MR. COYNE: I object for the reasons previously stated, direct the witness not to answer.	Communications as to the negotiations for the sale of the property as a means of settling the case were not intended to be confidential or secret as reflected in RTC Exhibit 16.
84:6-84:10	MR. SCHWARTZBAUER: Was it your understanding, Bob, that if the negotiations that Gary Macomber refers to in this letter [Exhibit 16] were successful the City would end up as owner of the property?	MR. COYNE: Object for the reasons previously stated and direct the witness not to answer.	Communications as to the negotiations for the sale of the property as a means of settling the case were not intended to be confidential or secret as reflected in RTC Exhibit 16. With respect to any work product claim that may be asserted, Reilly has demonstrated substantial need for obtaining this information.

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
85:14-85:21	MR. SCHWARTZBAUER: [Exhibit 17, a letter dated July 30, 1971, from Gary Macomber to the assignment clerk states "I hereby request that the above case be stricken subject to reinstatement by counsel at any time."] Who did you discuss [this] matter with?	MR. COYNE: I object to the question. Elicits a matter of the attorney/client privilege from the who he talked to about the settlement of the case. It reaches into the extent to privileged area, and I instruct the witness not to answer.	The identity of the individuals with whom the witness discussed the matter is not privileged.
85:23-86:2	MR. SCHWARTZBAUER: With whom did you discuss the matter of striking the case subject to reinstatement?	MR. COYNE: I object for the reasons previously stated and instruct the witness not to answer this question.	The identity of the individuals with whom he discussed the matter is not privileged.
87:2-90:1	MR. SCHWARTZBAUER: [Exhibit 18, August 9, 1971 PCA citizens board meeting excerpts] . . . says "He [Lindall] said the company is planning to phase-out the most odorous portion of their operation by September 1st, 1971, and it is expected that they will be able to reach some resolution on price." What did you tell the board at this public meeting with respect to the negotiations that were going on between Reilly and St. Louis Park.		The question seeks the witness' recollection of a statement he made at a public meeting. Information disclosed at a public meeting is not confidential or secret. Also, Mr. Lindall opened the door to this line of inquiry by stating that the quote which was attributable to him was inaccurate. He determined that the statement was inaccurate by relying on attorney/client communications and his position at that time. Because of his use of the privilege in this affirmative way Reilly should be allowed to inquire how or why the statement was inaccurate.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
-------------------------	----------------	-----------	--

MR. LINDALL: I can't say with certainty what I said, but my belief is that the transcription which is included at this point of the minutes is not accurate of what I believe I would have said.

MR. SCHWARTZBAUER: I understand your problem, Bob. Then my question is what did you say to the best of your recollection. What did you tell them?

MR. COYNE: To the extent you have to reach back into the attorney/client communications, the advice to you is not to answer. To the extent that you have an independent recollection which you have said you don't have, you are free to testify as to what you said when you addressed the board that day.

MR. LINDALL: Well I find that it would be very difficult for me to tell you exactly what I said without telling you what I believe my position was at that time. And I believe the position puts me into jeopardy of violating the attorney/client privilege, and, therefore, I look for direction from my counsel as to whether I am authorized by him to answer the question.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	MR. SCHWARTZBAUER: In what respect was it inaccurate?	MR. COYNE: Object to the question and instruct the witness not to answer for the reasons previously stated.	
92:11-92:25	MR. SCHWARTZBAUER: Your next exhibit is 19 [a letter dated September 20, 1971 from Gary Macomber to Robert Lindall]. Could you tell us whether you recognize that and then tell us what it is?	MR. COYNE: Earlier this afternoon we had correspondence between counsel for Co-Plaintiffs and my objection was that as such communication the matter is privileged. This document, as a privileged communication, apparently was inadvertently produced in the course of discovery. We would ask that the document not be marked and direct the witness not to testify concerning the communication.	Any privilege that may have been associated with RTC Exhibit 19 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions relating to the document may not now be blocked by privilege claims.
93:4-93:10	MR. SCHWARTZBAUER: Exhibit 19, Bob, is a letter from Gary Macomber to you dated September 20th, 1971, which just reads, "Dear Bob: Enclosed --"	MR. COYNE: Excuse me. I have to object that we don't want the letter marked, nor do we want the contents of the letter read into the record. So if you proceed to do so it is over objection.	Any privilege that may have been associated with RTC Exhibit 19 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions relating to the document may not now be blocked by privilege claims.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
93:14-93:17	MR. SCHWARTZBAUER: [Exhibit 19 states,] "Enclosed are copies of the correspondence as per our telephone conversation." What did he send you?	MR. COYNE: Object for reasons previously stated and direct the witness not to answer.	Any privilege that may have been associated with RTC Exhibit 19 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions relating to the document may not now be blocked by privilege claims.
95:2-98:19	MR. SCHWARTZBAUER: . . . I asked you some questions earlier about this letter from Gary Macomber to Thomas Reiersgord dated July 30th, 1971, Exhibit 16. And the State advised you not to answer them, and therefore, you declined to answer them. One of my questions was whether the last sentence in that letter ["Should the City and the Company fail to reach agreement in the pending negotiations the City will reinstate the matter on the trial calendar."] was consistent with your understanding as to what would be done in the event that the settlement negotiations were unsuccessful. And with respect to that, is there anyone who is in a better position to answer that than you? Let's start with the PCA. Is there anybody with the PCA that is in a better position to answer that question than yourself?	MR. COYNE: In the course of the ambiguity of the question	The question seeks the identity of State employees who would have information on the negotiation of the settlement. The identity of witnesses is not privileged or confidential information.

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
		I direct the witness not to answer for fear that it may invoke an answer which brings into issue matters that are privileged.	
102:15-103:3	MR. SCHWARTZBAUER: I am going to hand you Exhibit 20. What is that?	MR. COYNE: This document, like at least two other documents marked today, appears to be, and our position is, a privileged communication between counsel for the Agency and the staff of the Agency. This document, like the others, was inadvertently produced in the course of the exchange of documents. I would ask for its return. We would ask that it not be marked as an exhibit. We would direct the witness not to testify concerning its preparation or its contents.	Any privilege that may have been associated with RTC Exhibit 20 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions pertaining to the document may not now be blocked by privilege claims.
103:22-104:4	MR. SCHWARTZBAUER: Is this document, Exhibit 20, a memo that you sent to Grant Merritt, Edward M. Wiik and C. A. Johannes, dated September 21st, 1971?	MR. COYNE: I would object for the reasons previously stated and direct the witness not to answer.	Any privilege that may have been associated with RTC Exhibit 20 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions pertaining to the document may not now be blocked by privilege claims.
104:5-104:9	MR. SCHWARTZBAUER: I will say that and I will just say that I have several other questions regarding that document, but		Any privilege that may have been associated with RTC Exhibit 20 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly.

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	with my understanding that you are instructing him not answer it, therefore, I won't burden the record with them.		Therefore, questions pertaining to the contents of the document may not now be blocked by privilege claims.
107:3-107:12	MR. SCHWARTZBAUER: This chronology, Exhibit 21, says that you discussed --	MR. COYNE: Excuse me. I would object Ed, to your reading into the record this summary of the conversation purportedly held between Mr. Lindall and some City Attorney. Such communication being privileged. And on that basis should not be a part of this record.	Any privilege that may have been associated with RTC Exhibit 21 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions pertaining to a meeting which is reflected in the document may not now be blocked by privilege claims.
107:14-107:20	MR. SCHWARTZBAUER: The chronology says that you discussed litigation with a City Attorney and concurs with the belief that the City should establish necessary measures to clean up premises upon discontinuance of Republic Creosote operation. Did you say that?	MR. COYNE: I object for the reasons previously stated and instruct the witness not to answer.	Any privilege associated with RTC Exhibit 21 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions pertaining to a meeting which is reflected in the document may not now be blocked by privilege claims.
107:22-108:3	MR. SCHWARTZBAUER: Bob, this is important. At that time were you and the attorney for the City of St. Louis Park working together, or at that time, were you beginning to have an adversary relationship with		The information sought by this inquiry is not privileged because Reilly is merely trying to ascertain the facts on which the privilege claim is based.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	the City of St. Louis Park?	MR. COYNE: I object for the reasons previously stated and instruct the witness not to answer.	
108:4-108:12	MR. SCHWARTZBAUER: Isn't it true that on November 15th, 1971 or thereabouts, you told the City Attorney that the City would be responsible for the cleanup measures that would be undertaken at the closing of the Republic Creosote operation?	MR. COYNE: I object for the reasons previously stated and instruct the witness not to answer, and further, there is no foundation for the question.	Any privilege associated with RTC Exhibit 21 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions pertaining to a meeting which is reflected in the document may not now be blocked by privilege claims.
108:14-108:19	MR. SCHWARTZBAUER: At the time this meeting occurred hadn't whatever arrangement may have been--existed between you and the City Attorney for this lawsuit kind of fallen apart and weren't you looking to the City of St. Louis Park for the responsible persons to clean up the premises.	MR. COYNE: Same objection.	Any privilege associated with RTC Exhibit 21 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions pertaining to a meeting which is reflected in the document may not now be blocked by privilege claims.
108:21-108:25	MR. SCHWARTZBAUER: Were you working with the City or against them at the time?	MR. COYNE: For the reasons previously stated I am constrained to again object to the question and instruct the witness not to answer.	The information sought by this inquiry is not privileged because Reilly is merely trying to ascertain the facts on which the privilege claim is based.

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
109:17-110:13	<p>MR. SCHWARTZBAUER: Let's look at Exhibit 22. What is that, Bob?</p> <p>MR. LINDALL: It is a letter dated November 16, 1971, from me -- excuse me. To me from Harvey J. McPhee, then director of Public Health for the City of St. Louis Park, with copies shown to Chris Cherches, City Manager and Wayne Popham, City Attorney.</p> <p>MR. SCHWARTZBAUER: Okay I have several questions on this exhibit, but in view of the positions that you have stated on the record I won't ask them.</p>	<p>MR. POPHAM: We would object to this document on the grounds that it is subject to the privilege and work product requirements by terms and by terms refers to the pending litigation. And we would object to its use.</p> <p>MR. COYNE: And likewise the State of Minnesota would object to its use and direct the witness not to answer questions probing the contents of the letter.</p>	<p>Any privilege that may have been associated with RTC Exhibit 22 has been waived by the voluntary production of the document by plaintiffs to counsel for Reilly. Therefore, questions relating to the contents of the document may not now be blocked by privilege claims. The substance of this correspondence is also set forth in RTC Exhibit 85 which was voluntarily produced by plaintiffs to counsel for Reilly thereby waiving any privilege that may have attached to the correspondence. <u>See</u> RTC Exhibit 85, p. 7.</p>
110:15-111:3	MR. SCHWARTZBAUER: I am going to hand you Exhibit 23. What is that one?	MR. POPHAM: We would object to this document on the same grounds as Exhibit 22.	Any privilege that may have been associated with RTC Exhibit 23 has been waived by the voluntary production of the document by plaintiffs to counsel for Reilly. Therefore, questions pertaining to the document may not now be blocked

DEPOSITION OF ROBERT J. LINDALL:

APPENDIX D (continued)

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
		MR. COYNE: And likewise, we would object to having the witness testify to the document and the inclusion of this document in the course of this deposition for reasons previously stated.	by privilege claims. The substance of the letter is also revealed in RTC Exhibits 182 and 281, which were voluntarily disclosed by plaintiffs to counsel for Reilly thereby waiving any associated privileges.
114:8-114:14	MR. SCHWARTZBAUER: Now, with respect to the letter itself, which is Exhibit 23, I just want a clarification. Have you instructed him not to answer any questions with respect to that?	MR. COYNE: Yes	Any privilege that may have been associated with RTC Exhibit 23 has been waived by the voluntary production of the document by plaintiffs to counsel for Reilly. Therefore, questions pertaining to the document may not now be blocked by privilege claims. The substance of the letter is also revealed in RTC Exhibits 182 and 281, which were voluntarily disclosed by plaintiffs to counsel for Reilly thereby waiving any associated privileges.
117:6-117:15	MR. SCHWARTZBAUER: [The question "How much oil and creosote saturated the ground in the plant area," found in Exhibit 24, a memorandum prepared by Larry Anderson, dated December 14, 1971, was discussed in substance between Harvey McPhee of the City and Robert Lindall, Marty Osborn and Larry Anderson of the State] what was said?	MR. COYNE: To the extent that the question if discussed intentionally discussed within Government, being the City the and MPCA, such communication would be privileged and our directive to Mr. Lindall would be not to answer the question.	To the extent that RTC Exhibit 24 reflects the information discussed by these individuals, any privileges associated with those communications have been waived by the voluntary disclosure of the document by the plaintiffs to counsel for Reilly.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
117:17-118:13	MR. SCHWARZBAUER: Okay. If this seems repetitious forgive me. But I hadn't intended my previous questions to apply to the next question and the document so I will say it now. "To what extent can the Company be required to clean up this oil and creosote?" Was that question discussed by those people at the investigation?	MR. COYNE: Are you saying including Ward Barton [a Reilly Tar official]?	To the extent that RTC Exhibit 24 reflects the information discussed by the government people, any privileges associated with those communications have been waived by the voluntary disclosure of the document by the plaintiffs to counsel for Reilly.
	MR. SCHWARTZBAUER: Yes, or any other combination of those people.	MR. COYNE: Of course, our objection would be the same as previously stated, if the question only came up among the Government people and not with Mr. Barton, and direction to the witness would be the same as before.	
120:17-120:23	MR. SCHWARTZBAUER: [Mr. Anderson in Exhibit 24] says among other things, the saturated ground is a potential source of groundwater and surface water pollution. Did you agree with that?	MR. COYNE: I object for the reasons previously stated and in addition, the witness is not qualified to answer, and direct him not to answer the question.	The inquiry seeks information on the intended scope of the 1970 lawsuit which the State has affirmatively placed in issue thereby waiving associated privileges. Reilly has demonstrated substantial need for obtaining this information. Any privilege that may have been associated with RTC Exhibit 24 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions pertaining to the document may not now be blocked by privilege claims.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
120:25-121:9	MR. SCHWARTZBAUER: Okay [Mr. Anderson in Exhibit 24] also says, "...however, to require the company to remove all this ground is unrealistic." Did Mr. Anderson say that at any meeting of the various persons who were present at this investigation?	MR. COYNE: And I think, Ed it is important again to draw the distinction between what was said with Mr. Barton from Reilly Tar Chemical and what was not said in his presence or in the presence of other company people not representing the company.	Any privilege that may have been associated with RTC Exhibit 24 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions pertaining to the discussions that are reflected in the document may not now be blocked by privilege claims.
121:13-121:19	MR. SCHWARTZBAUER: Do you remember Mr. Anderson making that statement [. . . "to require the company to remove all the ground is unrealistic"] at all? You can say that yes or no.	MR. COYNE: I object to the question since it necessarily elicits privileged communication between an attorney and client.	Any privilege that may have been associated with RTC Exhibit 24 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions pertaining to the discussions that are reflected in the document may not now be blocked by privilege claims. The statement is also reflected in RTC Exhibits 85 (pp. 7-8) and 182 (p. 3), which were voluntarily disclosed by plaintiffs to counsel for Reilly thereby waiving any associated privileges.
122:3-122:8	MR. SCHWARTZBAUER: With respect to the statement ". . . however, to require the company to remove all the ground is unrealistic." Did you agree with that?	MR. COYNE: I object for the reasons previously stated	The inquiry seeks information on the intended scope of the 1970 lawsuit which the State has affirmatively placed in issue, thereby waiving associated privileges. Reilly has demonstrated substantial need for obtaining this information. Any privilege that may

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
		and instruct the witness not to reply.	have been associated with RTC Exhibit 24 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions pertaining to the document may not now be blocked by privilege claims. The statement is also reflected in RTC Exhibits 85 (pp. 7-8) and 182 (p. 3) which were voluntarily disclosed by plaintiffs to counsel for Reilly thereby waiving any associated privileges.
125:8-125:25	MR. SCHWARTZBAUER: Exhibit 27, [a carbon copy of your letter to Wayne Popham dated December 17, 1971, and] the second paragraph of that letter reads, "Attached is an initial draft of the memorandum from Larry Anderson, concerning the findings during that investigation." And the investigation is the investigation that was done on December 14th, 1971, if we look at the first paragraph. So I just want to know, Bob, which version of Larry Anderson's memo did you send to Wayne Popham? Was it the version that said it is unrealistic to expect the company to remove all the ground or the changed version?		Any privileges that may have been associated with RTC Exhibit 27 have been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions relating to the correspondence may not now be blocked by privilege claims. The substance of the correspondence and the fact that the memo was transmitted is also revealed in RTC Exhibits 182 and 281 which were voluntarily produced by plaintiffs to counsel for Reilly thereby waiving any associated privileges.
		MR. COYNE: For the same reasons as previously stated with regard to the exchanging of correspondence between counsel for the City of St. Louis Park and counsel for the State of Minnesota, we	

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
		would object and direct the witness not to answer. This document, like the other documents, was inadvertently produced. We ask for its return and ask that it not be marked as an exhibit in this case.	
129:22-130:6	MR. SCHWARTZBAUER: What is it? [Exhibit 28].	MR. COYNE: We would object to the introduction of this document and testimony of this witness regarding this document insofar as the document memorializes the briefs and opinions of counsel for the State of Minnesota in conversations with representatives of the State of Minnesota, and therefore, for those reasons and at the peril of waiving the privilege which otherwise this document enjoys, we would direct the witness not to answer.	Any privilege that may have been associated with RTC Exhibit 28 has been waived by the voluntary production of the document by plaintiffs to counsel for Reilly. Therefore, questions relating to the document may not now be blocked by privilege claims.
130:19-131:10	MR. SCHWARTZBAUER: Bob, do you recognize--let me put it this way: Exhibit 28 appears to be a three-page document consisting of handwritten--it looks like handwriting of various people. But it looks to my inexperienced eyes as though the first page and a half is a handwritten memo of D.L.W. Would that be Dale Wikre, Bob, as far as you know?	MR. LINDALL: May I answer? MR. COYNE: This is a privileged document. Insofar	Any privileges that may have been associated with RTC Exhibit 28 have been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions relating to the document may not now be blocked by privilege claims.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	MR. SCHWARTZBAUER: Okay. And instruct him not to answer?	as it is privileged, no, it is not appropriate for the witness to answer, and I would object.	
		MR. COYNE: And instruct him not to answer. Mr. Wikre is available, as you know, and met with us as recently as yesterday. So he is the proper person to ask.	
131:17-131:25	MR. SCHWARTZBAUER: The first page of the memo says, "Lindall believes the company will be closing down in June. Therefore it will be important to take whatever action the Agency decides on soon." Was that your belief?	MR. COYNE: Object for the reasons previously stated, instruction the witness not to answer.	Any privilege that may have been associated with RTC Exhibit 28 has been waived by the voluntary production of the document by plaintiffs to counsel for Reilly. Therefore, questions relating to discussions which are reflected in the document may not now be blocked by privilege claims.
	MR. SCHWARTZBAUER: Then I am not going to ask him anymore questions about his belief, because you won't let him answer anyway.		
132:3-132:8	MR. SCHWARTZBAUER: Will you let him answer any questions about his knowledge of the status of negotiations between St. Louis Park and Reilly?	MR. COYNE: No, for the reasons previously stated.	The status of the negotiations between Reilly and the City were not intended to be confidential or secret, therefore, no privilege attaches to this information. To the extent that the inquiry calls for work product information, Reilly has demonstrated substantial need for obtaining this information. Also, the privilege as to the State's knowledge of

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
			negotiations has been waived by the voluntary disclosure of RTC Exhibit 85. That exhibit documents discussions between the City and the State concerning negotiations. <u>See</u> RTC Exhibit 85, pgs. 6-10.
132:17-132:25	MR. SCHWARTZBAUER: On the lower half of the second page of that exhibit [28] there is some more handwriting, and it looks like C. A. J. Is that Mr. Johannes' note, Bob?	THE WITNESS: May I answer? MR. COYNE: This apparently is a different document, but presents the same issues insofar as Mr. Lindall is referenced in it; therefore, I would direct the witness not to answer for the reasons previously stated.	Any privileges that may have been associated with RTC Exhibit 28 have been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, any questions relating to the documents may not now be blocked by privilege claims.
135:1-135:13	MR. SCHWARTZBAUER: Skipping on to the fourth line from the bottom, [of Exhibit 29, a memo from Larry Anderson routed to George Koonce] the author is describing the steps that he-- that the City is going to require with respect to the property. The author says, "This procedure would allow some amounts of tar and creosote to remain in the soil, but Harvey feels this would correct the problem since phenols have not been found in the groundwater during past surveys." Did Larry Anderson		Any joint defense or common enterprise rationale for asserting privilege has been waived by the voluntary production of this document by plaintiffs to counsel for Reilly. The City has also opened up this area of inquiry by affirmatively placing in issue through its cross-claim.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	tell you that he had this conversation with Mr. McPhee?	MR. COYNE: Object for the reasons previously stated and instruct the witness not to answer.	
135:15-135:20	MR. SCHWARTZBAUER: Did you have conversations with Mr. McPhee directly along the lines of determining what corrective measures would be necessary after Reilly closed its plant?	MR. COYNE: We would object for the reasons previously stated and direct the witness not to reply.	Any privilege that may have been associated with this information has been waived by the voluntary production of RTC Exhibits 22 and 23 by plaintiffs to counsel for Reilly. These exhibits reflect communications between Mr. McPhee and Mr. Lindall on the corrective measures required. The question also addresses the intended scope of the 1970 lawsuit which the State and City have affirmatively placed in issue thereby waiving associated privileges.
135:21-136:23	MR. SCHWARTZBAUER: I have some other questions with respect to this document --	MR. COYNE: I think you should ask them so if we get a ruling it is really depositive of this examination.	Any privilege of joint defense or common enterprise that may have been associated with RTC Exhibit 29 have been waived by the voluntary disclosure of that document by plaintiffs to counsel for Reilly. Therefore, questions relating to the document may not now be blocked by privilege claims.
	MR. SCHWARTZBAUER: I believe that if a ruling was granted in our favor it would apply in principle to all questions that are in principle the same ones that I have asked.	MR. COYNE: Well, as you know, we are very willing to identify the players on the State side and to provide you with what information you can acquire through counsel for the State of Minnesota. And I	

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
-------------------------	----------------	-----------	--

think the -- obviously the election is yours whether you proceed with your examination or not. All I am saying is that if you are going to go to the Court and get a dispositive order it would be of benefit, I think, if the Court could look at the particular questions you asked and give its opinion. I don't think it will be so easy for the Court to give a specific mandate which is not going to be subject to specific statements or lack of agreement on our part.

MR. SCHWARTZBAUER: I think you made it quite clear that you are not going to let Mr. Lindall tell me why he did what he did or why he refrained from doing so. So I am not going to bother to clutter up the record.

138:23-139:12 MR. SCHWARTZBAUER: [Exhibit 30 is a copy of a memo from Harvey J. McPhee to the City Manager relating to Reilly Tar & Chemical dated February 2, 1972.] The document in the last paragraph, Bob, talks about a conversation between Harvey McPhee and Mr. George Koonce. And it says, "Therefore, McPhee called Mr. George Koonce and requested that no letter be sent. A progress

Mr. Koonce is permanently disabled and unable to testify. See Schwartzbauer affidavit dated September 15, 1983 on file herein. Mr. Koonce's statement has been disclosed by plaintiff to counsel for Reilly. Therefore, the statement itself is not privileged. The inquiry does not ask for the substance of a privileged communication, rather it inquires as to the witness' knowledge of a fact, and is therefore not privileged. The statement is also revealed in RTC Exhibits 85 and 281, which were volun-

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	report in brief was given to Mr. Koonce. Mr. Koonce indicated that if the City acquired the property, their office would "close the matter, and it would be up to us to solve our own problems . . ." Do you have any information as to whether or not Mr. Koonce said that?	MR. COYNE: I would object for the reasons previously stated and direct the witness not to answer, especially insofar as you have noted the deposition of Mr. Koonce next month.	tarily disclosed by plaintiffs to counsel for Reilly thereby waiving any privileges that may be associated with the information.
139:14-139:21	MR. SCHWARTZBAUER: Did you, Bob, discuss with Mr. Koonce the fact that if the City acquires the property the PCA should close the matter --	MR. COYNE: I will object.	Whether the witness had a conversation with Mr. Koonce and the topic of the conversation is not privileged.
	-- and leave it up to St. Louis Park to solve its own problems.	MR. COYNE: I object for the reasons previously stated and direct the witness not to reply.	
139:23-140:4	MR. SCHWARTZBAUER: Was that in fact a discussion that you had with Mr. Koonce arising out of the correspondence you had with Gary Macomber and Thomas Reiersgord relative to dismissing--striking the case from the calendar?	MR. COYNE: I would object to the question for the reasons previously stated and direct the witness not to answer.	Whether the witness had a conversation with Mr. Koonce and the topic of that conversation is not privileged.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
140:24-141:7	MR. SCHWARTZBAUER: Did you know in 1971 or 1972 before you left the Pollution Control Agency that an agreement of this sort was going to be signed by St. Louis Park and Reilly?	MR. COYNE: Objection. The form of the question necessarily intertwines privileged and non-privileged communications, attorney work product, and on that basis I object and instruct the witness not to answer.	Information received by the witness on the negotiations for sale of the property would not have been a confidential or secret communication, therefore, it would not be privileged. Also, any privilege that may have existed concerning the State's knowledge of negotiations has been waived by the voluntary disclosure of RTC Exhibit 85. That exhibit documents discussions between the City and the State concerning the purchase agreement negotiations. <u>See</u> RTC Exhibit 85, pgs. 6-10.
141:10-141:16	MR. SCHWARTZBAUER: Although you didn't see the document until recently did you know before you left the PCA that an agreement for the purchase of real estate had been executed by St. Louis Park and by Reilly?	MR. COYNE: I object for reasons previously stated and direct the witness not to respond.	Information received by the witness on the agreement for purchase of real estate would not have been a confidential or secret communication, therefore, it would not be privileged. Also, any privilege that may have existed concerning the State's knowledge of the sale has been waived by the voluntary disclosure of RTC Exhibit 85. That exhibit documents discussions between the City and the State concerning the purchase of real estate. <u>See</u> RTC Exhibit 85, pgs. 6-10.
141:18-141:10	MR. SCHWARTZBAUER: I call your attention this time to Paragraph 9 [of the Purchase Agreement, Exhibit 31], which is entitled "Current Litigation." And among other things, the document says that, "It is understood that this agreement represents a means of settling the issues involved in <u>State of Minnesota, by The Minnesota Pollu-</u>		Information received by the witness on the agreement for purchase of real estate would not have been a confidential or secret communication, therefore, it would not be privileged. Also, any privilege that may have existed concerning the State's knowledge of the sale has been waived by the voluntary disclosure of RTC Exhibit 85. That exhibit documents discussions between the City and the State concerning the purchase of real estate. <u>See</u> RTC Exhibit 85, pgs. 6-10.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	<p>tion Control Agency and the City of St. Louis Park, Plaintiffs vs. Reilly Tar and Chemical Corporation, Defendant. And the document also says that, "It is understood that the City of St. Louis Park will deliver dismissals with prejudice and without cost to Defendant executed by itself and by the Plaintiff State of Minnesota at closing." Were you aware before you left the PCA that St. Louis Park had agreed to do that?</p>	<p>MR. COYNE: I object. The question necessarily raises the same objections earlier voiced and for that reason I must instruct the witness not to answer.</p>	
142:12-142:16	<p>MR. SCHWARTZBAUER: Do you know what basis the City of St. Louis Park had for believing that it would be able to deliver a dismissal executed by the State of Minnesota?</p>	<p>MR. COYNE: I object for the same reasons and in addition, there is no foundation for the question.</p>	<p>Information received by the witness on the negotiations for sale of the property would not have been a confidential or secret communication, therefore, it would not be privileged. Also, any privilege that may have existed concerning the State's knowledge of negotiations has been waived by the voluntary disclosure of RTC Exhibit 85. That exhibit documents discussions between the City and the State concerning the purchase agreement negotiations and the City's belief that the State would deliver a dismissal. See RTC Exhibit 85, pgs. 6-10.</p>
146:21-147:1	<p>MR. SCHWARTZBAUER: Is it fair to say as of that time [July 1972 when you had a conversation with Mr. Reiersgord] you were aware of the fact that your complaint asked not only for an injunction, but for such</p>		<p>Knowledge of what information is stated in the complaint is not privileged. Even if the question was construed as eliciting information protected by the work product doctrine, Reilly has demonstrated substantial need for obtaining this information.</p>

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	other relief as may be appropriate.	MR. COYNE: I object for the reasons previously stated and direct the witness not to answer.	
147:3-147:9	MR. SCHWARTZBAUER: Were you aware at the time of this July 21st, 1972, telephone conversation and letter [Exhibit 33] that serious problems had been raised with respect to the condition of the soils and the groundwater at the site?	MR. COYNE: I object to the form of the question and direct the witness not to answer for the reasons previously stated.	Information received by the witness on the agreement for purchase of real estate would not have been a confidential or secret communication, therefore, it would not be privileged. Also, any privilege that may have existed concerning the State's knowledge of the sale has been waived by the voluntary disclosure of RTC Exhibit 85. That exhibit documents discussions between the City and the State concerning the purchase of real estate and the conditions of soil and groundwater. <u>See</u> RTC Exhibit 85, pgs. 6-10.
147:25-148:4	MR. SCHWARTZBAUER: Bob, at the time you got this letter did you know that St. Louis Park and Reilly had signed an agreement providing for the sale of the real estate?	MR. COYNE: I object for the reasons previously stated and direct the witness not to answer.	Information received by the witness on the agreement for purchase of real estate would not have been a confidential or secret communication, therefore, it would not be privileged. Also, any privilege that may have existed concerning the State's knowledge of the sale has been waived by the voluntary disclosure of RTC Exhibit 85. That exhibit documents discussions between the City and the State concerning the purchase of real estate and the conditions of soil and groundwater. <u>See</u> RTC Exhibit 85, pgs. 6-10.
148:6-148:10	MR. SCHWARTZBAUER: And did you know at the time you got this letter that St. Louis		If Mr. Lindall received this information from the City it would not be privileged under a joint defense or common enter-

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	Park had offered the responsibility to clean up the premises?	MR. COYNE: I object for the reasons previously stated and lack of foundation.	prise theory because after the signing of the Purchase Agreement when the City agreed to take over the property "as is" the City assumed some degree of clean-up responsibility. From that date on it is obvious that the State and City no longer shared the same interests in the litigation.
151:10-151:14	MR. SCHWARTZBAUER: Was there any other activity at all concerning this litigation after this letter [Exhibit 33, July 21, 1972 letter from Mr. Reiersgord to Mr. Lindall] was written?	MR. COYNE: I object to the breadth and form of the question and direct the witness not to answer for the reasons previously stated.	Reilly has demonstrated substantial need for obtaining this information.
151:16-151:21	MR. SCHWARTZBAUER: Well, were there any communications between the parties to the litigation subsequent to July 21st, 1972, and prior to the date you left?	MR. COYNE: I object to form and breadth of the question and for the reasons previously stated direct the witness not to answer.	Any communications between the State and/or City and Reilly would not be privileged. Any communications between the State and City during this time period would not be privileged under a joint defense or common enterprise theory because after the signing of the Purchase Agreement when the City agreed to take over the property "as is" the City assumed some degree of clean-up responsibility. From that date on it is obvious that the State and City no longer shared the same interests in the litigation.

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
151:23-152:1	MR. SCHWARTZBAUER: Well, during that five month period, Bob, did you regard this as an active file or closed one?	MR. COYNE: I object for the reasons previously stated and direct the witness not to answer.	Reilly has demonstrated substantial need for obtaining this information. This is also a fact question.

APPENDIX D

CITATIONS TO DEPOSITION QUESTIONS RELATING TO THE SETTLEMENT, OBJECTIONS THERETO AND REASONS ANSWERS ARE NOT PRIVILEGED

DEPOSITION OF JOHN B. VAN de NORTH:

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
11:20-12:8	MR. SCHWARTZBAUER: Tell us what happened [in your first contact with the Reilly matter on or about June 15, 1973].	<p>MR. KENEFICK: Let's stick to the facts, Mr. Van de North, as to any meetings or contacts because of the privilege or the asserted privilege that has been raised by the State. Let's leave out any conversations with any client or any staff of the Pollution Control Agency.</p> <p>MR. COYNE: I would join in the objection and object to the breadth and form of the question, because I think it necessarily intertwines privileged and non-privileged communication and attorney work product, and would join in that objection and direct the witness not to answer that question.</p>	<p>There was no common enterprise or joint defense between the City and State in 1973. Any privilege that may have existed between those parties was destroyed by the signing of the Purchase Agreement, whereby the City agreed to purchase the property "as is" thereby assuming some clean-up responsibility. From that time on the City and State no longer shared the same interests in the litigation and their communications were no longer privileged. Additionally, any privilege that may have existed with respect to the witness' meeting with Mr. Worden has been waived by the voluntary disclosure by plaintiffs to counsel for Reilly of RTC Exhibit 34. That document reveals the substance of the meeting between the parties. Therefore questions relating to the meeting may not now be blocked on by privilege claims. The information sought by this question is disclosed in RTC Exhibit 85 which was voluntarily produced by plaintiffs to counsel for Reilly, thereby waiving any associated privileges that may have attached. <u>See</u> RTC Exhibit 85, pp. 10-11.*</p>

* With respect to all of the questions asked of Mr. Van de North in Appendix D, Reilly asserts that the answers to the questions are not privileged because of waiver. In April of 1983 in this Court, Mr. Van de North offered via his own affidavit sworn testimony to the Court on the issue of the settlement of the 1970 lawsuit. See Van de North affidavit, April 14, 1983, on file herein. When the affidavit of an attorney is submitted to the court on behalf of his client, which affidavit purports to be based on information received by him as an attorney for his client, any existed attorney-client privilege or work product assertion is waived. See Revised Memorandum in Support of Reilly Tar & Chemical Corporation's Renewed Motion for an Order Compelling Discovery dated April 20, 1984, pages 54-57.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
13:8-13:13	MR. SCHWARTZBAUER: Do you remember the circumstances that led up to [Mr. Worden meeting with you in your office on or about June 15, 1973]?	MR. COYNE: I object to the form and breadth of the question. I think it necessarily elicits from the witness matters which are or may be privileged and direct the witness not to answer.	There was no common enterprise or joint defense between the City and State in 1973. Any privilege that may have existed between those parties was destroyed by the signing of the Purchase Agreement, whereby the City agreed to purchase the property "as is" thereby assuming some clean-up responsibility. From that time on the City and State no longer shared the same interests in the litigation and their communications were no longer privileged. Additionally, any privilege that may have existed with respect to the witness' meeting with Mr. Worden has been waived by the voluntary disclosure by plaintiffs to counsel for Reilly of RTC Exhibits 34 and 85. Those documents reveal the substance of the meeting between the parties. Therefore questions relating to the meeting may not now be blocked on by privilege claims.
14:6-14:9	MR. SCHWARTZBAUER: Tell us the substance of the discussion [between you and Mr. Worden concerning the Reilly matter on or about June 15, 1973].	MR. COYNE: I object, Mr. Schwartzbauer, for the reasons earlier stated and would direct the witness not to answer.	There was no common enterprise or joint defense between the City and State in 1973. Any privilege that may have existed between those parties was destroyed by the signing of the Purchase Agreement, whereby the City agreed to purchase the property "as is" thereby assuming some clean-up responsibility. From that time on the City and State no longer shared the same interests in the litigation and their communications were no longer privileged. Additionally, any privilege that may have existed with respect to the witness' meeting with Mr. Worden has been waived by the voluntary disclosure by plaintiffs to counsel for Reilly of RTC Exhibits 34 and

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
14:16-14:20	MR. SCHWARTZBAUER: In connection with that meeting [on or about June 15, 1973], Jack, were you engaging with Mr. Worden in any kind of mutual planning of the strategy with respect to the Reilly Tar litigation?	MR. COYNE: I object for the reasons earlier stated and direct the witness not to answer.	85. Those documents reveal the substance of the meeting between the parties. Therefore questions relating to the meeting may not now be blocked on by privilege claims. There was no common enterprise or joint defense between the City and State in 1973. Any privilege that may have existed between those parties was destroyed by the signing of the Purchase Agreement, whereby the City agreed to purchase the property "as is" thereby assuming some clean-up responsibility. From that time on the City and State no longer shared the same interests in the litigation and their communications were no longer privileged. Additionally, any privilege that may have existed with respect to the witness' meeting with Mr. Worden has been waived by the voluntary disclosure by plaintiffs to counsel for Reilly of RTC Exhibits 34 and 85. Those documents reveal the substance of the meeting between the parties. Therefore questions relating to the meeting may not now be blocked on by privilege claims. The inquiry is also aimed at trying to ascertain the facts on which the privilege claim is based.
15:2-15:9	MR. SCHWARTZBAUER: Did you know before [Mr. Worden] came in [for that June 1973 meeting] that there was or had been a lawsuit pending between the PCA and Reilly?	MR. COYNE: I object for the reasons earlier stated and at this point it seems to me that you are probing	There was no common enterprise or joint defense between the City and State in 1973. Any privilege that may have existed between those parties was destroyed by the signing of the Purchase Agreement, whereby the City agreed to purchase the property "as is" thereby assuming some clean-up responsibility. From that time on the City and State no longer

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
		the mind of the attorney at the time. And those questions in our view are inappropriate and there is no basis for those questions, are objectionable and I would direct the witness not to answer.	shared the same interests in the litigation and their communications were no longer privileged. Additionally, any privilege that may have existed with respect to the witness' meeting with Mr. Worden has been waived by the voluntary disclosure by plaintiffs to counsel for Reilly of RTC Exhibits 34 and 85. Those documents reveal the substance of the meeting between the parties. Therefore questions relating to the meeting may not now be blocked on by privilege claims. The inquiry is also aimed at trying to ascertain the facts on which the privilege claim is based.
15:11-15:18	MR. SCHWARTZBAUER: Jack at that [June] meeting [with Mr. Worden] were you aware that you were discussing whatever you discussed with a lawyer representing a party to pending litigation?	MR. COYNE: I object for the reasons earlier stated and direct the witness not to answer. The question really probes the understanding of the attorney at the time and such questions are impermissible in our view.	There was no common enterprise or joint defense between the City and State in 1973. Any privilege that may have existed between those parties was destroyed by the signing of the Purchase Agreement, whereby the City agreed to purchase the property "as is" thereby assuming some clean-up responsibility. From that time on the City and State no longer shared the same interests in the litigation and their communications were no longer privileged. Additionally, any privilege that may have existed with respect to the witness' meeting with Mr. Worden has been waived by the voluntary disclosure by plaintiffs to counsel for Reilly of RTC Exhibits 34 and 85. Those documents reveal the substance of the meeting between the parties. Therefore questions relating to the meeting may not now be blocked by privilege claims. The inquiry is also aimed at trying to ascertain the facts on which the privilege claim is based.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
15:20-15:25	MR. SCHWARTZBAUER: Was there any thought in your mind that you wanted to have a confidential discussion with Mr. Worden concerning the pending litigation?	MR. COYNE: Object for the reasons earlier stated and would direct the witness not to answer.	There was no common enterprise or joint defense between the City and State in 1973. Any privilege that may have existed between those parties was destroyed by the signing of the Purchase Agreement, whereby the City agreed to purchase the property "as is" thereby assuming some clean-up responsibility. From that time on the City and State no longer shared the same interests in the litigation and their communications were no longer privileged. Additionally, any privilege that may have existed with respect to the witness' meeting with Mr. Worden has been waived by the voluntary disclosure by plaintiffs to counsel for Reilly of RTC Exhibits 34 and 85. Those documents reveal the substance of the meeting between the parties. Therefore questions relating to the meeting may not now be blocked on by privilege claims. The inquiry is also aimed at trying to ascertain the facts on which the privilege claim is based.
16:2-16:7	MR. SCHWARTZBAUER: Did you, Jack, believe that the discussions that you had with Mr. Worden were confidential?	MR. COYNE: Object for the reasons earlier stated and furthermore, that the questions are repetitive and repetitious and I would direct the witness not to answer.	There was no common enterprise or joint defense between the City and State in 1973. Any privilege that may have existed between those parties was destroyed by the signing of the Purchase Agreement, whereby the City agreed to purchase the property "as is" thereby assuming some clean-up responsibility. From that time on the City and State no longer shared the same interests in the litigation and their communications were no longer privileged. Additionally, any privilege that may have existed with respect to the witness' meeting with Mr. Worden has been waived by the

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
16:9-16:11	MR. SCHWARTZBAUER: Did you intend that your conversations be privileged?	MR. COYNE: The same objections for same reasons and direct the witness not to answer.	voluntary disclosure by plaintiffs to counsel for Reilly of RTC Exhibits 34 and 85. Those documents reveal the substance of the meeting between the parties. Therefore questions relating to the meeting may not now be blocked on by privilege claims. The inquiry is also aimed at trying to ascertain the facts on which the privilege claim is based.
16:20-17:6	MR. SCHWARTZBAUER: I have handed the witness RTC Exhibit 34. Jack, can you tell us what that is?	MR. COYNE: I object to the inclusion of this exhibit.	There was no common enterprise or joint defense between the City and State in 1973. Any privilege that may have existed between those parties was destroyed by the signing of the Purchase Agreement, whereby the City agreed to purchase the property "as is" thereby assuming some clean-up responsibility. From that time on the City and State no longer shared the same interests in the litigation and their communications were no longer privileged. Additionally, any privilege that may have existed with respect to the witness' meeting with Mr. Worden has been waived by the voluntary disclosure by plaintiffs to counsel for Reilly of RTC Exhibits 34 and 85. Those documents reveal the substance of the meeting between the parties. Therefore questions relating to the meeting may not now be blocked on by privilege claims. The inquiry is also aimed at trying to ascertain the facts on which the privilege claim is based.
			Any privilege that may have been associated with RTC Exhibit 34 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore questions relating to the docu-

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
		as a part of the record in this deposition. The objection is on the basis that this memorandum or letter of communications between counsel and co-plaintiff is privileged and we would object to the marking and the inclusion of this document in the record, as I have said, for any examination of this witness with regard to this privileged communication. I would direct the witness not to answer questions with regard to this exhibit.	ment may not now be blocked by privilege claims. There was no common enterprise or joint defense between the City and State in 1973. Any privilege that may have existed between those parties was waived by the signing of the Purchase Agreement in 1972, whereby the City agreed to purchase the property "as is" thereby assuming some clean-up responsibility. From that time on the City and State no longer shared the same interests in the litigation and their communications were no longer privileged. Reilly has also demonstrated substantial need for obtaining this information.
17:18-18:1	MR. SCHWARTZBAUER: Exhibit 34, Jack, is a letter dated June 15, 1973, on the letterhead of the Minnesota Pollution Control Agency, apparently from you, bearing the name Jack Van de North and is addressed to Rolfe A. Worden. Is that your signature?	MR. COYNE: I would object to any examination of this witness with regard to this document, which as I have said, we view as privileged. And I will instruct the witness not to answer.	Any privilege that may have been associated with RTC Exhibit 34 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore questions relating to the document may not now be blocked by privilege claims. There was no common enterprise or joint defense between the City and State in 1973. Any privilege that may have existed between those parties was waived by the signing of the Purchase Agreement in 1972, whereby the City agreed to purchase the property "as is" thereby assuming some clean-up responsibility. From that time on the City and State no longer shared the same interests in the litigation and their communications were no longer privileged. Reilly has also demonstrated substantial need for obtaining this information.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
18:7-18:9	MR. SCHWARTZBAUER: Did you send that letter [Exhibit 34] to Mr. Worden?	MR. COYNE: I object for the reasons earlier stated and direct the witness not to answer.	Any privilege that may have been associated with RTC Exhibit 34 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore questions relating to the document may not now be blocked by privilege claims. There was no common enterprise or joint defense between the City and State in 1973. Any privilege that may have existed between those parties was waived by the signing of the Purchase Agreement in 1972, whereby the City agreed to purchase the property "as is" thereby assuming some clean-up responsibility. From that time on the City and State no longer shared the same interests in the litigation and their communications were no longer privileged. Reilly has also demonstrated substantial need for obtaining this information.
18:25-19:4	MR. SCHWARTZBAUER: At the time you wrote this letter [Exhibit 34], Jack, were you aware that the City had reached a settlement agreement with Reilly Tar?	MR. COYNE: I object for the reasons earlier stated and direct the witness not to answer.	Any privilege that may have been associated with RTC Exhibit 34 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore questions relating to the document may not now be blocked by privilege claims. There was no common enterprise or joint defense between the City and State in 1973. Any privilege that may have existed between those parties was waived by the signing of the Purchase Agreement in 1972, whereby the City agreed to purchase the property "as is" thereby assuming some clean-up responsibility. From that time on the City and State no longer shared the same interests in the litigation and their communications were

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
19:6-19:12	MR. SCHWARTZBAUER: At the time you wrote this letter [Exhibit 34] were you aware that the City had become the owner of the property?	MR. COYNE: I object for the reasons earlier stated and direct the witness not to answer. These questions all probe the mental impressions and knowledge of the lawyer at the time and are impermissible.	no longer privileged. Reilly has also demonstrated substantial need for obtaining this information. Any privilege that may have been associated with RTC Exhibit 34 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore questions relating to the document may not now be blocked by privilege claims. There was no common enterprise or joint defense between the City and State in 1973. Any privilege that may have existed between those parties was waived by the signing of the Purchase Agreement in 1972, whereby the City agreed to purchase the property "as is" thereby assuming some clean-up responsibility. From that time on the City and State no longer shared the same interests in the litigation and their communications were no longer privileged. Reilly has also demonstrated substantial need for obtaining this information.
19:14-20:2	MR. SCHWARTZBAUER: In connection with this matter had you learned that the City had purchased the property from Reilly Tar and Chemical Corporation and had, as a part of that acquisition, agreed to be responsible for cleaning up the property?	MR. COYNE: Object to the form and breadth of the question. There is no foundation for the question. And furthermore, the question necessarily will require the witness to make	Any privilege that may have been associated with RTC Exhibit 34 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore questions relating to the document may not now be blocked by privilege claims. There was no common enterprise or joint defense between the City and State in 1973. Any privilege that may have existed between those parties was waived by the signing of the Purchase Agreement in 1972, whereby the City agreed to purchase the property "as is" thereby assuming some clean-up responsibility. From that time on the City and State no longer

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
		some recollection which inextricably intertwines privileged and non-privileged communications and attorney work product over the period of time he represented the State of Minnesota. And on that basis I would object and direct the witness not to answer.	shared the same interests in the litigation and their communications were no longer privileged. Reilly has also demonstrated substantial need for obtaining this information.
20:4-20:7	MR. SCHWARTZBAUER: Was one of the subjects discussed by you and Mr. Worden St. Louis Park's plans for cleaning up the property?	MR. COYNE: I would object for the reasons earlier stated and direct the witness not to answer.	There was no common enterprise or joint defense between the City and State in 1973. Any privilege that may have existed between those parties was destroyed by the signing of the Purchase Agreement, whereby the City agreed to purchase the property "as is" thereby assuming some clean-up responsibility. From that time on the City and State no longer shared the same interests in the litigation and their communications were no longer privileged. Additionally, any privilege that may have existed with respect to the witness' meeting with Mr. Worden has been waived by the voluntary disclosure by plaintiffs to counsel for Reilly of RTC Exhibit 34. That document reveals the substance of the meeting between the parties. Therefore questions relating to the meeting may not now be blocked on by privilege claims. This information is also disclosed in RTC Exhibit 85 which was voluntarily disclosed by plaintiffs to counsel for Reilly thereby waiving any associated privileges. See RTC Exhibit 85 pgs. 10-11.

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
20:13-20:17	MR. SCHWARTZBAUER: At the time of your meeting with Mr. Worden [in June 1973] what was your expectation as to who would be cleaning up the property?	MR. COYNE: Object for the reasons earlier stated and direct the witness not to answer.	There was no common enterprise or joint defense between the City and State in 1973. Any privilege that may have existed between those parties was destroyed by the signing of the Purchase Agreement, whereby the City agreed to purchase the property "as is" thereby assuming some clean-up responsibility. From that time on the City and State no longer shared the same interests in the litigation and their communications were no longer privileged. Additionally, any privilege that may have existed with respect to the witness' meeting with Mr. Worden has been waived by the voluntary disclosure by plaintiffs to counsel for Reilly of RTC Exhibit 34. That document reveals the substance of the meeting between the parties. Therefore questions relating to the meeting may not now be blocked on by privilege claims. This information is also disclosed in RTC Exhibit 85 which was voluntarily disclosed by plaintiffs to counsel for Reilly thereby waiving any associated privileges. See RTC Exhibit 85 pgs. 10-11.
20:19-20:25	MR. SCHWARTZBAUER: Jack, at the time you had the meeting with Mr. Worden [in June 1973] was that meeting one you would characterize as a meeting with a co-plaintiff, or was that a meeting which you would characterize as one with an adverse party?	MR. COYNE: I object for the reasons earlier stated and direct the witness not to answer.	The inquiry does not seek privileged information, rather the inquiry is aimed at ascertaining the facts on which the privilege claim is based. Any privilege that may have been associated with RTC Exhibit 34 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore questions relating to the document may not now be blocked by privilege claims. There was no common enterprise or joint defense between the City and State in 1973. Any

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
21:2-21:9	MR. SCHWARTZBAUER: At that point in time, Jack, was St. Louis Park on the same side of the lawsuit as the State of Minnesota, or the other side of the lawsuit?	MR. COYNE: I object for the reasons earlier stated. You know very well, Ed, what things were at the time. The bare record will clearly show who is on what side. I direct the witness not to answer.	<p>privilege that may have existed between those parties was waived by the signing of the Purchase Agreement in 1972, whereby the City agreed to purchase the property "as is" thereby assuming some clean-up responsibility. From that time on the City and State no longer shared the same interests in the litigation and their communications were no longer privileged. Reilly has also demonstrated substantial need for obtaining this information.</p> <p>The inquiry does not seek privileged information, rather the inquiry is aimed at ascertaining the facts on which the privilege claim is based. Any privilege that may have been associated with RTC Exhibit 34 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore questions relating to the document may not now be blocked by privilege claims. There was no common enterprise or joint defense between the City and State in 1973. Any privilege that may have existed between those parties was waived by the signing of the Purchase Agreement in 1972, whereby the City agreed to purchase the property "as is" thereby assuming some clean-up responsibility. From that time on the City and State no longer shared the same interests in the litigation and their communications were no longer privileged. Reilly has also demonstrated substantial need for obtaining this information.</p>

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
22:19-22:25	MR. SCHWARTZBAUER: After the meeting with Rolfe Worden [in June 1973] and after you wrote the letter [Exhibit 34] did you have any further activity with respect to that file?	MR. COYNE: I object to the form of the question and for the reasons earlier stated, object to the question and direct the witness not to answer.	This inquiry does not seek the disclosure of confidential communications or information protected by the attorney-client or work product privileges. Reilly has also demonstrated substantial need for obtaining this information.
23:1-23:17	MR. SCHWARTZBAUER: Subsequent to that meeting [with Mr. Worden in June 1973] did you take any other action with respect to this file?	MR. KENEFICK: I think the breadth of the question is too broad, Mr. Schwartzbauer.	This inquiry does not seek the disclosure of confidential communications or information protected by the attorney-client or work product privileges. Reilly has also demonstrated substantial need for obtaining this information.
	MR. SCHWARTZBAUER: He can answer that yes or no and that would lead to a subsequent question that would be less broad.	MR. KENEFICK: Maybe if you could rephrase it as to particularities we might be able to get something.	
	MR. SCHWARTZBAUER: I will stick with it.	MR. COYNE: I would object. It would necessarily inextricably intertwine privileged and non-privileged communications and attorney work product over that period. I would direct the witness not to answer.	

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
23:19-23:25	MR. SCHWARTZBAUER: Between June 15, 1973, and the date you left the Pollution Control Agency, Jack, did you have any communications with anybody else, your clients or anyone else, with respect to that matter?	MR. COYNE: Same objection and for same reasons I would direct the witness not to answer.	Whether the witness communicated with his client or anyone else does not seek the disclosure of information protected by the attorney-client or work product privileges.
24:2-24:9	MR. SCHWARTZBAUER: Either before or after that [June 15, 1973] meeting did you have occasion to review the Pollution Control Agency file regarding the Reilly matter?	MR. COYNE: I think it goes again, Mr. Schwartzbauer, to his work product over that period and the privileged communications with his client. And on that basis I would object and direct the witness not to answer.	The inquiry is not protected by the attorney-client privilege, in that whether he reviewed the file would not reveal any confidential or privileged communications. In answering this question the witness would not reveal his mental impressions, conclusions or legal theories, therefore the work product privilege is also not applicable.
28:24-29:8	MR. SCHWARTZBAUER: Did you review the PCA file and this [Reilly] matter at any time?	MR. KENEFICK: I think that is repetitious of many prior questions . . . (t)hat were objected to before. And I think he has indicated that he does not recognize [Exhibit 35] that should probably be the end of the inquiry.	The inquiry is not protected by the attorney-client privilege, in that whether he reviewed the file would not reveal any confidential or privileged communications. In answering this question the witness would not reveal his mental impressions, conclusions or legal theories, therefore the work product privilege is also not applicable.

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
		MR. COYNE: I would join in the objection and instruct the witness not to answer.	
31:18-31:25	MR. SCHWARTZBAUER: First of all, let's take RTC Exhibits 36 through 42. Had you seen those, Jack, before June 15, 1973?	MR. COYNE: I would object to the form of the question and direct the witness not to answer for the reasons previously stated. And as I have earlier stated, we will not object to questions as to whether or not he recognizes that document.	The inquiry is not protected by the attorney-client privilege, in that whether he reviewed the file would not reveal any confidential or privileged communications. In answering this question the witness would not reveal his mental impressions, conclusions or legal theories, therefore the work product privilege is also not applicable. To the extent that the position which Mr. Van de North stated at the June 1973 meeting with Mr. Worden was gleaned from a review of documents, Reilly should be allowed to inquire into the basis for that position. As previously stated, there was no common enterprise or joint defense which protected communications relating to the meeting. To the extent that any privileges may have existed, they have been waived by the voluntary production of RTC Exhibits 34 and 85, which reveal the substance of communications at the meeting.
33:9-34:2	MR. SCHWARTZBAUER: I have also, prior to the recess, handed to the witness copies of certain exhibits marked yesterday at Mr. Lindall's deposition. And I believe he has looked through them. I have handed him Lindall Exhibits 3, 5, 6, 8, 16, 22, 24, 31 and 33. And I gave -- that is, counsel for the State has copies of those		The inquiry is not protected by the attorney-client privilege, in that whether he reviewed the file would not reveal any confidential or privileged communications. In answering this question the witness would not reveal his mental impressions, conclusions or legal theories, therefore the work product privilege is also not applicable. To the extent that the position which Mr. Van de North stated at the June 1973 meeting with Mr. Worden was gleaned from a review of

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	which they received yesterday. Jack, prior to your meeting with Rolfe Worden [on June 15, 1973] had you seen those in the PCA file?	MR. COYNE: I object for the reasons earlier stated and direct the witness not to answer. Also Mr. Schwartzbauer, I think we should go through those exhibits individually, because as you well know, the document numbered 22 is a document which we objected to yesterday as a privileged document, one that we objected to inclusion of in this record. And accordingly, we direct the witness not to answer any questions with regard to Document No. 22.	documents, Reilly should be allowed to inquire into the basis for that position. As previously stated, there was no common enterprise or joint defense which protected communications relating to the meeting. To the extent that any privileges may have existed, they have been waived by the voluntary production of RTC Exhibits 34 and 85, which reveal the substance of communications at the meeting.
34:23-35:6	MR. SCHWARTZBAUER: Okay let's take Lindall Exhibit 3.	MR. COYNE: Would you pose the question, Mr. Schwartzbauer, please?	The inquiry is not protected by the attorney-client privilege, in that whether he reviewed the file would not reveal any confidential or privileged communications. In answering this question the witness would not reveal his mental impressions, conclusions or legal theories, therefore the work product privilege is also not applicable. To the extent that the position which Mr. Van de North stated at the June 1973 meeting with Mr. Worden was gleaned from a review of documents, Reilly should be allowed to inquire into the basis for that position. As previously stated, there was no common enterprise or joint defense which protected communications relating to the
	MR. SCHWARTZBAUER: I just did.	MR. COYNE: The State of Minnesota objects to the form and the breadth of your first question, which is anytime prior to the meeting of June 15, 1973 and for the reasons earlier stated, we direct the witness not to answer.	

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
35:11-35:14	MR. SCHWARTZBAUER: With respect to Exhibit 5, had you seen that prior to meeting with Mr. Worden?	MR. COYNE: Object for the reasons earlier stated and direct the witness not to reply.	meeting. To the extent that any privileges may have existed, they have been waived by the voluntary production of RTC Exhibits 34 and 85, which reveal the substance of communications at the meeting.
35:19-35:23	MR. SCHWARTZBAUER: With respect to Lindall Exhibit 6, had you seen that prior to your meeting with Rolfe Worden?	MR. COYNE: For the reasons earlier stated I object to the question and direct the witness not to answer.	The inquiry is not protected by the attorney-client privilege, in that whether he reviewed the file would not reveal any confidential or privileged communications. In answering this question the witness would not reveal his mental impressions, conclusions or legal theories, therefore the work product privilege is also not applicable. To the extent that the position which Mr. Van de North stated at the June 1973 meeting with Mr. Worden was gleaned from a review of documents, Reilly should be allowed to inquire into the basis for that position. As previously stated, there was no common enterprise or joint defense which protected communications relating to the meeting. To the extent that any privileges may have existed, they have been waived by the voluntary production of RTC Exhibits 34 and 85, which reveal the substance of communications at the meeting.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
36:8-36:11	MR. SCHWARTZBAUER: With respect to Exhibit 8, Jack, had you seen that prior to your meeting with Rolfe Worden?	MR. COYNE: Object for the reasons earlier stated and direct the witness not to answer.	<p>extent that the position which Mr. Van de North stated at the June 1973 meeting with Mr. Worden was gleaned from a review of documents, Reilly should be allowed to inquire into the basis for that position. As previously stated, there was no common enterprise or joint defense which protected communications relating to the meeting. To the extent that any privileges may have existed, they have been waived by the voluntary production of RTC Exhibits 34 and 85, which reveal the substance of communications at the meeting.</p> <p>The inquiry is not protected by the attorney-client privilege, in that whether he reviewed the file would not reveal any confidential or privileged communications. In answering this question the witness would not reveal his mental impressions, conclusions or legal theories, therefore the work product privilege is also not applicable. To the extent that the position which Mr. Van de North stated at the June 1973 meeting with Mr. Worden was gleaned from a review of documents, Reilly should be allowed to inquire into the basis for that position. As previously stated, there was no common enterprise or joint defense which protected communications relating to the meeting. To the extent that any privileges may have existed, they have been waived by the voluntary production of RTC Exhibits 34 and 85, which reveal the substance of communications at the meeting.</p>

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
36:16-36:19	MR. SCHWARTZBAUER: With respect to Exhibit 16, had you seen that before your visit with Rolfe Worden?	MR. COYNE: Object for the reasons stated and direct the witness not to answer.	The inquiry is not protected by the attorney-client privilege, in that whether he reviewed the file would not reveal any confidential or privileged communications. In answering this question the witness would not reveal his mental impressions, conclusions or legal theories, therefore the work product privilege is also not applicable. To the extent that the position which Mr. Van de North stated at the June 1973 meeting with Mr. Worden was gleaned from a review of documents, Reilly should be allowed to inquire into the basis for that position. As previously stated, there was no common enterprise or joint defense which protected communications relating to the meeting. To the extent that any privileges may have existed, they have been waived by the voluntary production of RTC Exhibits 34 and 85, which reveal the substance of communications at the meeting.
36:25-37:5	MR. SCHWARTZBAUER: With respect to Exhibit 22, had you seen that before your meeting with Rolfe Worden?	MR. COYNE: This document we would object to as a privileged communication. Object to its inclusion in the record and advise the witness to answer no question with regard to the document.	The inquiry is not protected by the attorney-client privilege, in that whether he reviewed the file would not reveal any confidential or privileged communications. In answering this question the witness would not reveal his mental impressions, conclusions or legal theories, therefore the work product privilege is also not applicable. To the extent that the position which Mr. Van de North stated at the June 1973 meeting with Mr. Worden was gleaned from a review of documents, Reilly should be allowed to inquire into the basis for that position. As previously stated, there was no common enterprise or joint defense

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
37:7-37:11	MR. SCHWARTZBAUER: With respect to Exhibit 24, had you seen that before your visit with Rolfe Worden?	MR. COYNE: Object to the form of the question and direct the witness not to answer for the reasons previously stated.	<p>which protected communications relating to the meeting. To the extent that any privileges may have existed, they have been waived by the voluntary production of RTC Exhibits 34 and 85, which reveal the substance of communications at the meeting. Any privilege that may have been associated with RTC Exhibit 22 has been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly.</p> <p>The inquiry is not protected by the attorney-client privilege, in that whether he reviewed the file would not reveal any confidential or privileged communications. In answering this question the witness would not reveal his mental impressions, conclusions or legal theories, therefore the work product privilege is also not applicable. To the extent that the position which Mr. Van de North stated at the June 1973 meeting with Mr. Worden was gleaned from a review of documents, Reilly should be allowed to inquire into the basis for that position. As previously stated, there was no common enterprise or joint defense which protected communications relating to the meeting. To the extent that any privileges may have existed, they have been waived by the voluntary production of RTC Exhibits 34 and 85, which reveal the substance of communications at the meeting.</p>
37:16-37:20	MR. SCHWARTZBAUER: With respect to Exhibit 31, Jack, had you seen that before		<p>The inquiry is not protected by the attorney-client privilege, in that whether he reviewed the file would not</p>

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	your meeting with Rolfe Worden?	MR. COYNE: Object to the question and direct the witness not to answer for the reasons previously stated.	reveal any confidential or privileged communications. In answering this question the witness would not reveal his mental impressions, conclusions or legal theories, therefore the work product privilege is also not applicable. To the extent that the position which Mr. Van de North stated at the June 1973 meeting with Mr. Worden was gleaned from a review of documents, Reilly should be allowed to inquire into the basis for that position. As previously stated, there was no common enterprise or joint defense which protected communications relating to the meeting. To the extent that any privileges may have existed, they have been waived by the voluntary production of RTC Exhibits 34 and 85, which reveal the substance of communications at the meeting.
38:1-38:6	MR. SCHWARTZBAUER: Exhibit 33 is the letter from Mr. Reiersgard to the attention of Robert Lindall, dated July 21st, 1972. Had you seen that before your meeting with Rolfe Worden?	MR. COYNE: Object to the question and direct the witness not to answer for the reasons previously stated.	The inquiry is not protected by the attorney-client privilege, in that whether he reviewed the file would not reveal any confidential or privileged communications. In answering this question the witness would not reveal his mental impressions, conclusions or legal theories, therefore the work product privilege is also not applicable. To the extent that the position which Mr. Van de North stated at the June 1973 meeting with Mr. Worden was gleaned from a review of documents, Reilly should be allowed to inquire into the basis for that position. As previously stated, there was no common enterprise or joint defense which protected communications relating to the meeting. To the extent that any privileges may have existed, they have

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
38:12-38:16	MR. SCHWARTZBAUER: Did you know before your meeting with Rolfe Worden that the Reilly Tar matter involved claims of ground and under-ground pollution?	MR. COYNE: Object for the reasons previously stated and direct the witness not to answer.	been waived by the voluntary production of RTC Exhibits 34 and 85, which reveal the substance of communications at the meeting. This question inquires into the scope of the 1970 lawsuit which the State has affirmatively placed in issue thereby waiving any privileges that may have attached to this information. Reilly has also demonstrated substantial need for obtaining this information. To the extent that the position stated by the witness at his meeting with Worden was based on the understanding sought in this question, Reilly may inquire, because any privilege that may have been associated with this information has been waived by the voluntary production of RTC Exhibits 34 and 85 which reveal the substance of the discussions at the meeting.
38:18-38:23	MR. SCHWARTZBAUER: Did you at any time before you left the Attorney General's staff know that the Reilly matter involved claims of ground and groundwater pollution?	MR. COYNE: I object to the form of the question and direct the witness not to answer for reasons previously stated.	This question inquires into the scope of the 1970 lawsuit which the State has affirmatively placed in issue thereby waiving any privileges that may have attached to this information. Reilly has also demonstrated substantial need for obtaining this information.
39:7-39:16	MR. SCHWARTZBAUER: What non-lawyer persons were involved in the decision making with respect to the Reilly Tar matter at that time?	MR. KENEFICK: I take it you are speaking of the PCA staff, is that it?	The question seeks the identity of witnesses who would have non-privileged information on the Reilly matter. The identity of witnesses is factual information and is not privileged.

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
------------------------	----------------	-----------	--

MR. SCHWARTZBAUER: Yes.

MR. COYNE: The State of Minnesota objects to the form and breadth of the question insofar as it inextricably intertwines privileged and non-privileged communications and attorney work product, and on that basis, we would direct the witness not to answer.

40:17-40:25

MR. VAN de NORTH: [I recall I met with PCA staff people either before or after the meeting with Mr. Worden.]

MR. SCHWARTZBAUER: Can you identify those people for me?

MR. VAN de NORTH: The names of the people at the meeting, as I recall, were George Koonce and my recollection is a little hazy with regard to the other people. But I think Dale Wikre may have been there. It's a very informal meeting, as I recall. Sort of standing around Mr. Koonce's desk.

If the witness met with the staff members before the Worden meeting and his position stated at the Worden meeting was gleaned from statements made by the staff, Reilly should be allowed to inquire into the discussions with the staff. As previously stated there was no common enterprise or joint defense which protected the Van de North disclosures to Worden. To the extent that any privileges may have existed, they have been waived by the voluntary production of RTC Exhibits 34 and 85, which reveal the substance of communications at the Worden meeting.

MR. COYNE: I would object to the continuing answer of the witness other than a response as to who he met with.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
41:8-41:22	MR. SCHWARTZBAUER: In your letter to Rolfe Worden [Exhibit 34] you assert a position on behalf of the PCA, "We will not be in a position to consider a dismissal of our Complaint against Reilly until we have received and reviewed a proposal from the City of St. Louis Park eliminating the potential pollution hazard at the Republic Creosote site." Was that your position or was that a decision or position arrived at by other people at the Pollution Control Agency?	MR. COYNE: For the reasons previously stated we object to references to the letter, to counsel for Reilly Tar reading into the record the content of the letter, and direct the witness not to answer any questions with regard to this document for the reasons previously stated.	Any privilege that may have been associated with this information has been waived by the voluntary disclosure of RTC Exhibit 34 by plaintiffs to counsel for Reilly. Therefore questions relating to information contained in the document may not now be blocked by privilege claims. The position of the PCA on the conditions necessary before a dismissal would be issued is set forth in RTC Exhibit 85 which was voluntarily disclosed by plaintiffs to counsel for Reilly thereby waiving any associated privileges. <u>See</u> RTC Exhibit 85, pp. 10-11.
43:6-43:11	MR. SCHWARTZBAUER: During the time you were with the PCA, Jack, was the Reilly Tar matter considered an active matter or a closed file?	MR. COYNE: Object to the question and direct the witness not to answer for the reasons previously stated.	Reilly has demonstrated substantial need for obtaining this information. This is also a fact question.

PAGE:LINE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
44:8-44:12	MR. SCHWARTZBAUER: Did anybody brief you on the Reilly Tar matter prior to your being with Worden [on June 15, 1973]?	MR. COYNE: I object to the question for the reasons previously stated and direct the witness not to answer.	To the extent that the position of Mr. Van de North as stated at the Worden meeting was based on a briefing prior to the meeting, Reilly should be allowed to inquire into this area. As previously stated there was no common enterprise or joint defense which protected the Van de North disclosures to Worden. To the extent that any privileges may have existed, they have been waived by the voluntary production of RTC Exhibits 34 and 85, which reveal the substance of communications at the Worden meeting. Also, the question posed to the witness does not call for privileged information, rather it is ultimately aimed at identifying the individual who briefed Mr. VandeNorth, if he was in fact briefed on the matter.

APPENDIX D

CITATIONS TO DEPOSITION QUESTIONS RELATING TO THE SETTLEMENT,
OBJECTIONS THERETO AND REASONS ANSWERS ARE NOT PRIVILEGED

DEPOSITION OF GARY R. MACOMBER:

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
13:8-13:12	MR. SCHWARTZBAUER: As I indicated, the letter [RTC Exhibit 14] says that you learned that the appraiser's report is due this week. What were you referring to there?	MR. POPHAM: I would object to that as calling for work product and attorney-client privilege.	Any privileges that may have been associated with RTC Exhibit 14 have been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions pertaining to the communication may not now be blocked by privilege claims.
13:14-13:16	MR. SCHWARTZBAUER: Gary, what was the relevance of the appraiser's report to your conversation with Lindall?	MR. POPHAM: Same objection.	Any privileges that may have been associated with RTC Exhibit 14 have been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions pertaining to the communication may not now be blocked by privilege claims.
13:21-14:4	MR. SCHWARTZBAUER: Reading on in the letter [Exhibit 14] it says "As soon as that is in Chris intends to recontact the Reilly Tar people and determine their reaction to that appraisal price. That meeting should occur during the week of July 19. After that is accomplished we will be in a		Any privileges that may have been associated with RTC Exhibit 14 have been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Therefore, questions pertaining to the communication may not now be blocked by privilege claims.

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	position to make a decision as to the certificate of readiness." How would that meeting help in making a decision with respect to the certificate of readiness?	MR. POPHAM: Same objection.	
14:6-14:10	MR. SCHWARTZBAUER: At about that time did you tell Lindall that the sale was being negotiated between St. Louis Park and Reilly was a proposed means of settling the lawsuit?	MR. POPHAM: Same objection.	The information which is sought by this inquiry was not intended to be a secret or confidential communication. Lindall also disclosed information on his knowledge of the negotiations in a public MPCA Board Meeting. <u>See</u> , RTC Exhibit 18.
15:11-15:20	MR. SCHWARTZBAUER: The letter [Exhibit 16] states from the first paragraph, "Lindall and I have discussed your letter of July 23, 1971 with the Pollution Control Agency and with the City of St. Louis Park." I just think we should keep in mind that the exhibit [15] that I just showed you was Mr. Reiersgord's letter of July 23, 1971. What was the substance of your conversation with Lindall?	MR. POPHAM: Same objection. MR. COYNE: I would join in that objection.	The information sought by this inquiry was waived by the voluntary disclosure of information on this issue in RTC Exhibit 85. <u>See</u> , RTC Exhibit 85, pg. 6.
15:20-16:12	MR. SCHWARTZBAUER: Let's proceed through the letter [Exhibit 16] a little bit together. You say to Mr. Reiersgord, "We will ask the clerk to strike the above-captioned case subject to reinstatement		Mr. Macomber's understanding is his personal knowledge of the facts, not secret or confidential information. Reilly has also demonstrated substantial need for obtaining this information. The information sought by this inquiry is also disclosed in RTC Exhibit 85 thereby

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	of the request of any counsel at any time. We are taking this action with the expectation that a mutually acceptable agreement will be negotiated between the City, and the company for the purchase of the company's property. We fully suspect the company to cease its refining operations by September 1, 1971 and to solve its present surface water runoff problem. Should the City and the company fail to reach agreement in the pending negotiations the City will reinstate the matter on the trial calendar." Gary, was it your further understanding if the City and the company did reach agreement that the case would not then be reinstated?		waiving any privileges. <u>See</u> , Exhibit 85, pg. 6.
19:18-20:6	MR. SCHWARTZBAUER: I would like to focus my questions upon the last sentence in the first paragraph [of Exhibit 20, a memorandum from Lindall to G. Merritt, E. Wiik, and C. A. Johannes] which reads, "In any event, the City of Saint Louis Park will probably not dismiss its action for some time due to a property damage claim against the company, which the City is holding in abeyance." Do	MR. POPHAM: Same objection.	Any privileges that may have been associated with RTC Exhibit 20 have been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. The property damage claim of the City is also discussed in detail in RTC Exhibit 85 which was voluntarily disclosed by plaintiffs to counsel for Reilly, thereby waiving any associated privileges. <u>See</u> RTC Exhibit 85, p. 8. The question asked of the witness requires only a yes or no answer and would not waive any privilege as to the topic. Furthermore, the fact that a party has a claim and what that

DEPOSITION OF GARY R. MACOMBER:

APPENDIX D (continued)

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	you know what that refers to?	MR. COYNE: As we earlier state in the course of the examination of Mr. Lindall, we object to the inclusion of this document and examination pertaining to this document on the basis of attorney work product. MR. POPHAM: We would have a work product objection to the question that is before the witness.	claim consists of is not not privileged information.

APPENDIX D

CITATIONS TO DEPOSITION QUESTIONS RELATING TO THE SETTLEMENT,
OBJECTIONS THERETO AND REASONS ANSWERS ARE NOT PRIVILEGED

DEPOSITION OF ROLFE A. WORDEN:

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
12:16-12:22	<p>MR. SCHWARTZBAUER: [The purchase agreement, Exhibit 31] reads: "It is understood that the City of Saint Louis Park will deliver dismissals with prejudice and without cost to defendant executed by itself and the Defendant State of Minnesota." At the time that this agreement was put together did you believe that the State would do that?</p> <p>MR. SCHWARTZBAUER: Okay. May I interpret all your objections as also containing that instruction.</p>	<p>MR. POPHAM: Objection. I instruct him not to answer.</p> <p>MR. POPHAM: That is correct. If there is something where I am objecting for the record and intending the witness to answer then I will indicate that.</p>	<p>The information sought is not privileged, as it was not intended that it remain confidential. The information sought deals with the position of a party in negotiations and that information would be conveyed to Reilly during the course of negotiations. To the extent the answer calls for work product information it is subject to disclosure in that it does not reflect the current trial strategies of the attorney. Reilly has also demonstrated substantial need for obtaining the information.</p>
13:11-14:8	<p>MR. SCHWARTZBAUER: Well, it would seem to me that if the City of St. Louis Park was promising to deliver a dismissal with prejudice executed by the State of Minnesota at closing there must have been</p>		<p>The information sought is not privileged, as it was not intended that it remain confidential. The information sought deals with the position of a party in negotiations, and that information would be conveyed to Reilly during the course of negotiations. To the extent the answer calls</p>

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	some reason for believing that. Can you tell me what the reason was?	MR. POPHAM: I don't know what the witness' answer to the question is but I am going to indicate to the witness that in my opinion it is not proper for you to respond with knowledge that reflects attorney-client communications or work product. I don't know whether there is something beyond that that enables you to answer the question so that's all I can really say; and I would, I think, probably further indicate that if there is a question in your mind about whether a given item of information is or isn't privileged or work product that you should confer with me before a position is taken on the record.	for work product information it is subject to disclosure in that it does not reflect the current trial strategies of the attorney. Reilly has also demonstrated substantial need for obtaining the information. Also, any privilege that may have been associated with this information has been waived by the voluntary disclosure by plaintiffs to counsel for Reilly of RTC Exhibit 85. That document states that the City and the PCA expected to dismiss the suit at the time of closing. See RTC Exhibit 85, pg. 10.
	MR. WORDEN: In order to answer that question I would be basing my answer on the client communications and work product and nothing that would not fall into that category.	MR. COYNE: I object also on the form and breadth of the question.	
14:9-14:12	MR. SCHWARTZBAUER: Did the State tell you that they would execute a dismissal with prejudice at closing?	MR. POPHAM: Objection.	The information sought is not privileged as it was not intended that it remain confidential. The inquiry deals with the position of a party in negotiations and that information would be conveyed to

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
		MR. COYNE: I join in the objection.	Reilly during the course of negotiations. To the extent the answer calls for work product information it is subject to disclosure in that it does not reflect the current trial strategies of the attorney. Reilly has also demonstrated substantial need for obtaining the information. Also, any privilege that may have been associated with this information has been waived by the voluntary disclosure by plaintiffs to counsel for Reilly of RTC Exhibit 85. That document states that the City and the State expected to dismiss the suit at the time of closing. See RTC Exhibit 85, pg. 10.
14:14-14:17	MR. SCHWARTZBAUER: Had you asked the State of Minnesota whether they would [execute a dismissal with prejudice at closing]?	MR. COYNE: I object. MR. POPHAM: Object.	The information sought is not privileged as it was not intended that it remain confidential. The inquiry deals with the position of a party in negotiations and that information would be conveyed to Reilly during the course of negotiations. To the extent the answer calls for work product information it is subject to disclosure in that it does not reflect the current trial strategies of the attorney. Reilly has also demonstrated substantial need for obtaining the information. Also, any privilege that may have been associated with this information has been waived by the voluntary disclosure by plaintiffs to counsel for Reilly of RTC Exhibit 85. That document states that the City and the State expected to dismiss the suit at the time of closing. See RTC Exhibit 85, pg. 10.
14:22-14:24	MR. SCHWARTZBAUER: What was your basis for believing		The information sought is not privileged as it was not intended that it remain con-

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	that [the State would deliver a dismissal at closing]?	MR. POPHAM: Objection. MR. COYNE: Join in the objection.	fidential. The inquiry deals with the position of a party in negotiations and that information would be conveyed to Reilly during the course of negotiations. To the extent the answer calls for work product information it is subject to disclosure in that it does not reflect the current trial strategies of the attorney. Reilly has also demonstrated substantial need for obtaining the information. Also, any privilege that may have been associated with this information has been waived by the voluntary disclosure by plaintiffs to counsel for Reilly of RTC Exhibit 85. That document states that the City and the State expected to dismiss the suit at the time of closing. <u>See</u> RTC Exhibit 85, pg. 10.
15:4-15:6	MR. SCHWARTZBAUER: What was the purpose of identifying all wells [in the purchase agreement, Exhibit 31] and leaving them intact?	MR. POPHAM: Objection.	This factual information would have been the subject of negotiation with a third party, Reilly. As a subject of negotiation, the information sought is not secret or confidential. The inclusion of this paragraph in the purchase agreement may also have been Mr. Worden's idea. As work product, Reilly has demonstrated substantial need for obtaining this information.
16:19-16:24	MR. SCHWARTZBAUER: [The second page, second paragraph of the agreement, Exhibit 62] reads, "The terms of the purchase agreement between the parties dated 14, 1972 shall survive the execution of this document unless herein modified." Do you know why that paragraph was included?	MR. POPHAM: Same objection.	This factual information would have been the subject of negotiation with a third party, Reilly. As a subject of negotiation, the information sought is not secret or confidential. The inclusion of this paragraph in the purchase agreement may also have been Mr. Worden's idea. As work product, Reilly has demonstrated substantial need for obtaining this information.

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
18:13-18:17	MR. SCHWARTZBAUER: During those conversations [with counsel for the PCA] did you bring the attorney for the State up to date on what was happening with respect to the sale?	MR. POPHAM: That would be objected to. MR. COYNE: I join in on the objection.	After the signing of the Purchase Agreement when the City agreed to take over the property "as is" the City assumed some degree of clean-up responsibility. From that date on it is obvious that the State and City no longer shared the same interests in the litigation.
20:7-20:8	MR. SCHWARTZBAUER: What was the purpose for the meeting [with Jack Van de North on or before June 15, 1973]?	MR. POPHAM: That would be objected to.	Any privilege associated with the meeting has been waived by the voluntary disclosure of RTC Exhibit 34 by the plaintiffs to counsel for Reilly. That document reflects the discussion at the meeting. Therefore, questions relating to the meeting should not now be blocked by privilege claims. There was no common enterprise or joint defense between the City and State in 1973 due to the signing of the Purchase Agreement by the City, whereby the City agreed to take over the property "as is." From that time on the City and State no longer shared the same interests in the litigation.
20:10-20:12	MR. SCHWARTZBAUER: What was said [at the meeting with Jack Van de North on or before June 15, 1973]?	MR. POPHAM: That would be objected to. MR. COYNE: Join in the objection.	Any privilege associated with the meeting has been waived by the voluntary disclosure of RTC Exhibit 34 by the plaintiffs to counsel for Reilly. That document reflects the discussion at the meeting. Therefore, questions relating to the meeting should not now be blocked by privilege claims. There was no common enterprise or joint defense between the City and State in 1973 due to the signing of the Purchase Agreement by the City, whereby the City agreed to take over the

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
20:17-21:17	MR. SCHWARTZBAUER: By this time [June 1973] did the Pollution Control Agency know that Saint Louis Park had taken over the responsibility for soil and water contamination?	MR. POPHAM: I will object to any response to the question that would call for either privileged or work product matter. I think this is a question, like the earlier question, if there is something from which you can answer the question that is not objectionable then you should answer it but you should not involve either of those items. MR. COYNE: I would join in the objection and further object that there is no foundation for the question.	property "as is." From that time on the City and State no longer shared the same interests in the litigation. There was no common enterprise or joint defense between the City and State in 1973. With the signing of the Purchase Agreement the City agreed to purchase the property "as is" thereby assuming some clean-up responsibility. From that time on the City and State no longer shared the same interests in the litigation. Reilly has also demonstrated substantial need for obtaining this information.
21:19-21:23	MR. SCHWARTZBAUER: Had you told the Pollution Control Agency that Saint Louis Park had taken over responsibility		There was no common enterprise or joint defense between the City and State in 1973. Any privilege that may have existed between those parties did not exist after

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	for soil and water contamination?	MR. POPHAM: Objection. MR. COYNE: Join in the objection.	the signing of the Purchase Agreement whereby the City agreed to purchase the property "as is" thereby assuming some clean-up responsibility. From that time on the City and State no longer shared the same interests in the litigation. Reilly has also demonstrated substantial need for obtaining this information.
21:25-22:7	MR. SCHWARTZBAUER: Looking at the third paragraph [of Exhibit 34, Van de North's June 15, 1973, letter to you] Van de North says to you: "To allow time for gathering further information and for submitting a proposal, the City of Saint Louis Park will attempt to delay the closing of the real estate transaction with Reilly until August 15, 1973." Did the State ask you to delay the closing?	MR. POPHAM: Objection. MR. COYNE: Join in the objection.	Any privilege that may have been associ- ated with the information sought by this inquiry has been waived by the voluntary disclosure of RTC Exhibit 34 by the plaintiffs to counsel for Reilly. There- fore, questions pertaining to the contents of the document may not now be blocked on by privilege claims. There was no common enterprise or joint defense between the City and State in 1973. Any privilege that may have existed between those parties did not exist after the signing of the Purchase Agreement whereby the City agreed to purchase the property "as is" thereby assuming some degree of clean-up responsibility. From that time on the City and State no longer shared the same interests in the litigation. Reilly has also demonstrated substantial need for obtaining this information.
22:9-22:12	MR. SCHWARTZBAUER: What difference did it make to the State as to whether the closing was delayed or not?	MR. POPHAM: Objection. MR. COYNE: Join in the objection.	Any privilege that may have been associ- ated with the information sought by this inquiry has been waived by the voluntary disclosure of RTC Exhibit 34 by the plaintiffs to counsel for Reilly. There- fore, questions pertaining to the contents of the document may not now be blocked on by privilege claims. There was no common

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
22:14-22:19	MR. SCHWARTZBAUER: Was there any suggestion on Van de North's part or your part that you meet with Reilly to discuss actions which were deemed necessary with respect to the site?	MR. POPHAM: Objection. MR. COYNE: Join in the objection.	<p>will enterprise or joint defense between the City and State in 1973. Any privilege that may have existed between those parties did not exist after the signing of the Purchase Agreement whereby the City agreed to purchase the property "as is" thereby assuming some degree of clean-up responsibility. From that time on the City and State no longer shared the same interests in the litigation. Reilly has also demonstrated substantial need for obtaining this information.</p> <p>Any privilege that may have been associated with the information sought by this inquiry has been waived by the voluntary disclosure of RTC Exhibit 34 by plaintiffs to counsel for Reilly. Therefore, questions pertaining to the contents of the document and the meeting reflected therein may not now be blocked by privilege claims. There was no common enterprise or joint defense between the City and the State in 1973. Any privilege that may have existed between those parties did not exist after the signing of the Purchase Agreement whereby the City agreed to purchase the property "as is" thereby assuming some degree of clean-up responsibility. From that time on the City and State no longer shared the same interests in the litigation.</p> <p>Any privilege that may have been associated with the information sought by this inquiry has been waived by the voluntary disclosure of RTC Exhibit 34 by plaintiffs to counsel for Reilly. Therefore,</p>
22:21-23:6	MR. SCHWARTZBAUER: Among other things, the letter [Exhibit 34] says in the second paragraph: "We will not be in a position to con-		

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	sider a dismissal of our complaint against Reilly until we have received and reviewed a proposal from the City of Saint Louis Park for eliminating pollution hazards at the Republic Creosote site." Now, did Mr. Van de North say anything about a necessity to obtain a proposal from Reilly for eliminating pollution hazards?	MR. POPHAM: Objection. MR. COYNE: Join in the objection.	questions pertaining to the contents of the document and the meeting reflected therein may not now be blocked by privilege claims. There was no common enterprise or joint defense between the City and the State in 1973. Any privilege that may have existed between those parties did not exist after the signing of the Purchase Agreement whereby the City agreed to purchase the property "as is" thereby assuming some degree of clean-up responsibility. From that time on the City and State no longer shared the same interests in the litigation.
24:19-25:5	MR. SCHWARTZBAUER: And indeed had the State of Minnesota expressed any objection to accepting Saint Louis Park as the one that would do the work rather than Reilly?	MR. POPHAM: I think that I am going to object to the form of the question to the State accepting the City as representing a legal conclusion. I think that the question of the witness should clarify statements made between himself and Mr. Reiersgord as against going to conclusions. So I would object to the form of the question as propounded.	Any privilege that may have been associated with the information sought by this inquiry has been waived by the voluntary disclosure of RTC Exhibit 34 by plaintiffs to counsel for Reilly. Therefore, questions pertaining to the contents of the document and the meeting reflected therein may not now be blocked by privilege claims. There was no common enterprise or joint defense between the City and the State in 1973. Any privilege that may have existed between those parties did not exist after the signing of the Purchase Agreement whereby the City agreed to purchase the property "as is" thereby assuming some degree of clean-up responsibility. From that time on the City and State no longer shared the same interests in the litigation.
25:25-26:3	MR. SCHWARTZBAUER: And in fact in the various conversations that you had with the		The information sought is not privileged, as it was not intended that it remain confidential. The information sought deals

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	State, as you mentioned earlier, had they indicated to you that they would [issue and deliver a dismissal when the closing finally occurred.]	MR. POPHAM: That would be objected to.	with the position of a party in negotiations and that information would be conveyed to Reilly during the course of negotiations. Any privilege that may have been associated with this information has been waived by the voluntary disclosure by plaintiffs to counsel for Reilly of RTC Exhibit 85. That document states that the City and the PCA expected to dismiss the suit at the time of closing. See RTC Exhibit 85, pgs. 9-10. Therefore, questions relating to the dismissal may not now be blocked by privilege claims.

APPENDIX D

CITATIONS TO DEPOSITION QUESTIONS RELATING TO THE SETTLEMENT,
OBJECTIONS THERETO AND REASONS ANSWERS ARE NOT PRIVILEGED

DEPOSITION OF WAYNE POPHAM:

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
9:4-9:5	MR. SCHWARTZBAUER: [In paragraph 3 of Exhibit 3, a September 1971 groundwater investigation report, states "Groundwater contaminated by phenolic compounds is objectionable and potentially a health hazard." Did you know that] (i)n 1971?	MR. HINDERAKER: Same objection [on the basis of work product].	The question relates to the intended scope of the 1970 lawsuit and thus the intended scope of the settlement between the City and Reilly, which the City has affirmatively placed in issue thereby waiving associated privileges. Reilly has demonstrated substantial need for obtaining this information.
9:7-9:8	MR. SCHWARTZBAUER: [Did you know groundwater contaminated by phenolic compounds is objectionable and potentially a health hazard] (i)n 1972?	MR. HINDERAKER: Same objection.	The question relates to the intended scope of the 1970 lawsuit and thus, the intended scope of the settlement between the City and Reilly as well as the scope of the Hold Harmless Agreement. The City has affirmatively placed these matters in issue thereby waiving associated privileges. Reilly has demonstrated substantial need for obtaining this information.
40:17-40:19	MR. SCHWARTZBAUER: Well, what gave rise to the writing of that memo [Exhibit 85], Wayne?	MR. HINDERAKER: Same objections.	Any privilege that may have been associated with RTC Exhibit 85 has been waived by the voluntary production of the document by plaintiffs to counsel for Reilly. Questions relating to the document may not now be blocked by privilege claims.

DEPOSITION OF WAYNE POPHAM:

APPENDIX D (continued)

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
40:21-40:23	MR. SCHWARTZBAUER: What were the events that occurred that caused you to send this [Exhibit 85] to Eldon Kaul?	MR. HINDERAKER: Same objections.	Any privilege that may have been associated with RTC Exhibit 85 has been waived by the voluntary production of the document by plaintiffs to counsel for Reilly. Questions relating to the document may not now be blocked by privilege claims.
54:2-54:8	MR. SCHWARTZBAUER: [Exhibit 31, the purchase agreement at page 5, Paragraph 9] says, "It is understood that the City of Saint Louis Park will deliver dismissals with prejudice and without cost to Defendant executed by itself and by the Plaintiff State of Minnesota at closing." At about this time did you believe that the State of Minnesota would dismiss the lawsuit?	MR. HINDERAKER: Same objections.	Any privilege that may have been associated with this information has been waived by the voluntary disclosure by plaintiffs to counsel for Reilly of RTC Exhibit 85. That document states that the City and the PCA expected to dismiss the suit at the time of closing. <u>See</u> RTC Exhibit 85, pg. 10.
54:10-54:14	MR. SCHWARTZBAUER: Had you talked to the State of Minnesota and had the State of Minnesota advised you that in fact it would be dismissing the litigation when the sale closed?	MR. HINDERAKER: Same objections. MR. COYNE: I join in the objection.	Any privilege that may have been associated with this information has been waived by the voluntary disclosure by plaintiffs to counsel for Reilly of RTC Exhibit 85. That document states that the City and the PCA expected to dismiss the suit at the time of closing. <u>See</u> RTC Exhibit 85, pg. 10.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
71:14-71:21	MR. SCHWARTZBAUER: In the same paragraph [of Exhibit 85, your letter to Eldon Kaul], the last sentence, right below the quote, Page 6, "At that time, it was the understanding of both the City and the Pollution Control Agency that the decision of the company to go out of business had solved the pollution problems at the site." Was that your understanding.	MR. HINDERAKER: Object to that on the same grounds.	Any privileges that may have been associated with RTC Exhibit 85 have been waived by the voluntary production of the document by plaintiffs to counsel for Reilly. Questions relating to the City's understandings which are reflected in that document may not now be blocked by privilege claims. Reilly has also demonstrated substantial need for obtaining this information.
71:23-71:25	MR. SCHWARTZBAUER: Was that the PCA's understanding [that the decision of the company to go out of business has solved to pollution problems at the site]?	MR. COYNE: I object for the reasons earlier stated.	Any privileges that may have been associated with RTC Exhibit 85 have been waived by the voluntary production of the document by plaintiffs to counsel for Reilly. Questions relating to the State's understanding, which is reflected in that document may not now be blocked by privilege claims.
72:2-72:9	MR. SCHWARTZBAUER: Was there an agreement at that time [1971] between the City and the Pollution Control Agency that as soon as the City and the company did reach an agreement regarding the purchase of the property, the Pollution Control Agency as well as the City would dismiss the lawsuit?	MR. HINDERAKER: Same objection. MR. COYNE: Join in the objection.	The information sought is not privileged, as it was not intended that it remain confidential. The information sought deals with the positions of the parties in negotiations for settlement and that information would be conveyed to Reilly during the course of negotiations. Also, to the extent that RTC Exhibit 85 reflects agreement between the City and State on conditions of dismissal, any privilege that may have been associated with that information has been waived by the voluntary disclosure of that document by plaintiffs to counsel for Reilly.

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
73:17-74:8	MR. SCHWARTZBAUER: On the bottom of Page 8 [of Exhibit 85] you discuss a meeting on February 1, 1972 between the City staff and the company. You say, "During that meeting, the City telephoned the Pollution Control Agency concerning the latest thinking on the matter of clean-up including excavation. At that time, the City was advised that the Pollution Control Agency would consider the pollution problems as closed, since both the Rice Division and the Department of Health indicated that there was no groundwater problem. It would be up to the City to take care of the cleanup on the site and get a sewer constructed." Who at the City was given that information?	MR. COYNE: I object as to communications between the staffs of the City and the Pollution Control Agency or between counsel for the co-plaintiffs at the time.	Any privilege that may have been associated with the answer to this question has been waived by the voluntary disclosure of RTC Exhibit 85 by plaintiffs to counsel for Reilly. That document references the telephone conversation and questions relating to the document may not now be blocked by privilege claims. Also, RTC Exhibit 281, which was disclosed by plaintiffs to counsel for Reilly, documents the substance of a telephone conversation between Mr. McPhee and Mr. Koonce. If that conversation is the one that is referred to in RTC Exhibit 85, it is clear that any privilege that may have existed was waived.
74:10-74:14	MR. SCHWARTZBAUER: Was it your understanding, Wayne, at the time that the City agreed to purchase the property from Reilly that the Pollution Control Agency would consider the problems as closed?	MR. HINDERAKER: Same Objections.	Reilly has demonstrated substantial need for obtaining this information. Also to the extent that Mr. Popham's understanding is reflected in RTC Exhibit 85, which was voluntarily disclosed by plaintiffs to counsel for Reilly, any associated privileges that may have existed have been waived.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
77:2-77:9	MR. SCHWARTZBAUER: [In Exhibit 85 at] (p)age 10 you say, "At the time of the agreement," and you are referring to the purchase agreement, "both the City and the Pollution Control Agency expected to dismiss the suit at the time of the closing which was set for October 7, 1972." Was that a factual statement?	MR. HINDERAKER: Same objection. MR. COYNE: Join in the objection.	Any privilege that may have been associated with this information has been waived by the voluntary disclosure by plaintiffs to counsel for Reilly of RTC Exhibit 85. Questions relating to the contents of the document may not now be blocked by privilege claims.
77:14-77:18	MR. SCHWARTZBAUER: Was there any discussion in the course of the NPDES hearings about the fact that alleged carcinogenic chemicals, including benzo pyrene had been discovered in the area?	MR. HINDERAKER: Same objection.	The NPDES hearing was a public hearing. Therefore, no privilege attaches to information presented during that hearing because there was clearly no intent that the information be kept confidential.
84:13-84:16	MR. SCHWARTZBAUER: In December of '74 were you discussing ground water problems with the Pollution Control Agency?	MR. HINDERAKER: Same objections. MR. COYNE: I would join in the objection.	After the signing of the Purchase Agreement in 1972 and the Hold Harmless Agreement in 1973, the interests of the State and the City were adverse. Therefore, there was no common enterprise or joint defense between the parties in 1974 and there is no privilege which protects the disclosure of communications between those parties at that time.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
85:16-86:5	<p>MR. SCHWARTZBAUER: Mr. Popham, you have in front of you RTC Exhibit 100. We have reached the magic number. Can you tell us what that is?</p> <p>MR. POPHAM: It's a letter written by me to Eldon Kaul dated December 19, 1974.</p> <p>MR. SCHWARTZBAUER: In the letter you say, "I think it would be desirable now to get a meeting scheduled to begin work on the stipulation for study of the ground water contamination at the Republic Creosote site." Did you in fact go to work and put together a meeting?</p>	<p>MR. COYNE: We would object to the inclusion of this document in deposition exhibits and do so on the basis of attorney work product.</p> <p>MR. HINDERAKER: Same objections as before.</p>	<p>After the signing of the Purchase Agreement in 1972 and the Hold Harmless Agreement in 1973, the interests of the State and City were adverse. Therefore, there was no common enterprise or joint defense between the parties in 1974 and there is no privilege which protects disclosure of communications between those parties at that time. Also, any privilege that may have existed has been waived by the voluntary disclosure of RTC Exhibit 100 by plaintiffs to counsel for Reilly.</p>
90:7-90:14	<p>MR. SCHWARTZBAUER: Is it correct to say that about this time then [1974] you began to negotiate with the Pollution Control Agency about two subjects; one the NPDES permit, and one the ground water problem?</p>	<p>MR. HINDERAKER: Same objection as with regard to the discussions about ground water and object to the</p>	<p>After the signing of the Purchase Agreement in 1972 and the Hold Harmless Agreement in 1973, the interests of the State and the City were adverse. Therefore, there was no common enterprise or joint defense between the parties in 1974 and there is no privilege which protects the disclosure of communications between those parties at that time.</p>

DEPOSITION OF WAYNE POPHAM:

APPENDIX D (continued)

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
		phraseology of the word "negotiate".	
		MR. COYNE: I would join in the objection.	
99:23-99:25	MR. SCHWARTZBAUER: Do you know what prompted this letter [RTC Exhibit 107 from Jay Heffern to Mr. Reiersgord and you dated July 9, 1976]?	MR. HINDERAKER: Same objections. MR. COYNE: I will join in the objection.	After the signing of the Purchase Agree- ment in 1972 and the Hold Harmless Agreement in 1973, the interests of the State and City were adverse. Therefore, there was no common enterprise or joint defense between the parties in 1976. If Mr. Popham's understanding was derived from communications with the State there is no privilege which protects the disclosure of this information.
104:7-104:8	MR. SCHWARTZBAUER: [RTC Exhibit 111, two pages of handwritten notes entitled "Pollution Control Agency -- City of St. Louis Park, meet- ing 10-7-77, "says in the middle "Popham feels it may be very difficult to include Reilly Tar & Chemical back into this subject."] Was that your opinion at that time?	MR. HINDERAKER: Same objections.	Any privileges that may have been associated with RTC Exhibit 111 have been waived by the voluntary disclosure of that document by plaintiffs to counsel for Reilly. Therefore, questions relating to the meeting which is reflected in the document may not now be blocked by privilege claims. Reilly has demon- strated substantial need for obtaining this information.
104:10-105:3	MR. SCHWARTZBAUER: On [In RTC Exhibit 111] on the second page, the author has written, "Possibly the Department of Health should bring a lawsuit against Reilly Tar & Chemical." Was that discussed at a meet- ing that you attended with		Any privilege that may have been associated with RTC Exhibit 111 has been waived by the voluntary disclosure of that document by plaintiffs to counsel for Reilly. Therefore, questions relating to the meeting which was reflected in the document may not now be blocked by privilege claims.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	Pollution Control Agency officials?	MR. HINDERAKER: Whoever produced the document, getting a chance to look at it, it appears someone's notes of a strategy conference between the attorneys and for that reason I raise the same objections as before. The document apparently was inadvertently produced. I don't recall seeing it before myself just now, but that's what it appears to be. MR. COYNE: We would join in the objection.	
105:5-105:12	MR. SCHWARTZBAUER: Was there discussion between St. Louis Park and the State of Minnesota that it might be more advantageous if the lawsuit was brought against Reilly by the Department of Health rather than the Pollution Control Agency?	MR. HINDERAKER: Same objections. MR. COYNE: We would join in those objections.	RTC Exhibit 111 reflects on page 2 discussion of the Department of Health bringing a lawsuit against Reilly. Any privilege that may have been associated with discussions concerning this topic has been waived by the voluntary disclosure of this document by plaintiffs to counsel for Reilly. Therefore, questions relating to discussions reflected in the document may not be now blocked by privilege claims.
105:14-105:18	MR. SCHWARTZBAUER: Was there a fear that the Pollution Control Agency would be held to have actually acquiesced in the settlement?	MR. HINDERAKER: Same objections MR. COYNE: Join in the objection.	This relates to the statement found in RTC Exhibit 111 which reflects discussion between the City and the State on the lawsuit being brought in the name of the Department of Health. Any privilege that may have been associated with the answer to the question has been waived by the voluntary disclosure of RTC Exhibit 111 by plaintiffs to counsel for Reilly.

APPENDIX D

CITATIONS TO DEPOSITION QUESTIONS RELATING TO THE SETTLEMENT,
OBJECTIONS THERETO AND REASONS ANSWERS ARE NOT PRIVILEGED

DEPOSITION OF DALE WIKRE:

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
85:3-85:7	MR. SCHWARTZBAUER: Did you help Mr. Van de North write this letter [RTC Exhibit 34]?	MR. SHAKMAN: I would object on the grounds of attorney-client communications and instruct the witness not to answer.	Any privileges that may have been associated with RTC Exhibit 34 have been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Questions relating to the preparation of the document may not now be blocked by privilege claims.
135:23-136:12	MR. SCHWARTZBAUER: Well, I am going to read various parts of this to you and ask you about it. Continuing from where I left off just a minute ago the memo [RTC Exhibit 111] says, "Popham feels it may be very difficult to include Reilly Tar & Chemical back into this subject." Did Mr. Popham say that at a meeting you attended?	MR. SHAKMAN: I would object and instruct the witness not to answer. I would note, for purposes of the record, the document is dated October 7, 1977 and at that time the State and City shared a common interest in pursuing the matter of the liability of the Reilly Tar & Chemical Company	Any privileges that may have been associated with RTC Exhibit 111 have been waived by the voluntary disclosure of the document by plaintiffs to counsel for Reilly. Questions relating to the meeting reflected in the document may not now be blocked by privilege claims.

DEPOSITION OF DAKE WIKRE:

APPENDIX D (continued)

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
-------------------------	----------------	-----------	--

for the subject contamination,
and accordingly communications
between Mr. Popham and Mr.
Donahue, attorney for the
Pollution Control Agency and
their respective clients,
would in our opinion be
privileged.

APPENDIX E

CITATIONS TO MISCELLANEOUS DEPOSITION QUESTIONS,
OBJECTIONS THERETO AND REASONS ANSWERS ARE NOT PRIVILEGED

DEPOSITION OF ROBERT J. LINDALL:

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
14:23-15:9	MR. SCHWARTZBAUER: Did you see [in] the documents that I supplied to you [that I suggested you might want to review for your own benefit prior to the deposition] any privileged documents?	MR. COYNE: I object to the question. The basis of the objection is that you are asking this man to give an opinion, his personal opinion, as to whether or not the documents shown to him are privileged. The privilege is a privilege which the State of Minnesota will assert. I think it's an inappropriate question to ask this witness.	It is not proper to instruct the witness not to answer this question. The inquiry does not seek the disclosure of privileged information. The question is relevant, in that Mr. Lindall was a Special Attorney General at the time the documents were written and it is relevant to find out whether he believed any of the documents were privileged at the time that they were written or received.
	MR. SCHWARTZBAUER: Are you instructing him not to answer then?	MR. COYNE: Yes.	
64:18-66:1	MR. SCHWARTZBAUER: Does Mr. Coyne's instruction to you then put you in the position where you are not able to reconstruct the meeting [of		Mr. Lindall was not an employee of the State of Minnesota at the time of his deposition. Therefore, his conversations with lawyers for the State prior to the deposition are no more protected than conversations with any other witness who is not an agent or employee of the State.
	December 7, 1970, between Reilly, the City, and the		

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
------------------------	----------------	-----------	--

State as reflected in RTC
Exhibit 11] and give us your
best recollection of what
was said?

MR. COYNE: Ed, are you
referring to the instruc-
tions on the record today
and the objections that we
have been discussing today
in today's deposition?

MR. SCHWARTZBAUER: I am
referring to whatever
instructions the witness was
referring to, and I assume
that he means all of them;
is that right, Bob?

MR. COYNE: My objection is
to the form of the question
insofar as it purports to
reach objections made in the
course of this deposition as
well as other advice given
to Mr. Lindall outside the
deposition, any such commun-
ications being privileged.
And I would direct the
witness to answer the ques-
tion only with regard to the
objections made by me today
in the course of the examin-
ation of Mr. Schwartzbauer,
if he can do so.

MR. SCHWARTZBAUER: Are you
claiming that your conversa-
tions with Mr. Lindall pre-
liminary to this deposition
are privileged?

MR. COYNE: Yes.

DEPOSITION OF ROBERT J. LINDALL:

APPENDIX E (continued)

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
-------------------------	----------------	-----------	--

MR. SCHWARTZBAUER: And if I ask Mr. Lindall questions about what you told him or what he told you in preparing for this deposition, would you instruct him not to answer.

MR. COYNE: Yes.

APPENDIX E

CITATIONS TO MISCELLANEOUS DEPOSITION QUESTIONS,
OBJECTIONS THERETO AND REASONS ANSWERS ARE NOT PRIVILEGED

DEPOSITION OF DALE WIKRE:

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
185:13-187:1	MR. SCHWARTZBAUER: Have any of those contracts [with the USGS] been entered into at the initiative of the Attorney General's staff?	<p>MR. SHAKMAN: By way of preparing foundation for objection; Mr. Wikre, do you know if you or your staff had conversation with the Attorney General's office in regard to the work to be performed by the USGS?</p> <p>MR. WIKRE: Yes, there was.</p>	Inquiry as to who hired an expert and for what purpose is not privileged and an answer to the question would not disclose any privileged or work product information.
		<p>MR. SHAKMAN: It's the view of the Attorney General that work done by the USGS under the contract with the State of Minnesota is protected by Rule 26B3 and 4 of the Federal Rules of Civil Procedure, and I will ascertain a work product privilege as to Mr. Wikre's answers to questions concerning the role of the Attorney General and the Minnesota Pollution Control Agency and the Minnesota Department of Health in regard to work done by the United States Geological</p>	

PAGE:LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
		Survey. I don't recall the precise question before us. Can we hear that back again?	
	MR. SCHWARTZBAUER: My question is whether or not those contracts were entered into on the initiative of the Attorney General. I disagree with your claim that the USGS work is work product but I don't know how we can possibly find out unless we first find out if it was done at the initiative of the Attorney General or some non-legal persons in the Pollution Control Agency staff.	MR. SHAKMAN: I would reference Rule 26B3 that speaks of being prepared in anticipation of litigation or for trial by and for other parties or by or for other parties representatives. I think that would speak to this and the precise conversations between the Attorney General and the Pollution Control Agency are not relevant and I would instruct the witness not to answer that question.	
191:7-192:13	MR. SCHWARTZBAUER: Who made arrangements with Professor Pfannkuch at the University of Minnesota?	MR. SHAKMAN: I would have an objection here. Mr. Pfannkuch, I believe, has been retained by the United	Who retained Professor Pfannkuch and for what purpose is not privileged and an answer to the question would not disclose any privileged or work product information.

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
-------------------------	----------------	-----------	--

States as an expert witness in this matter. To the extent that Mr. Wikre may have information as to such arrangements, that would be information shared in confidence by the United States in the joint prosecution of this action against Reilly Tar & Chemical and we instruct him not to answer. If there are some other arrangements involving Mr. Pfannkuch different from that that you have in mind I am not ruling that out. I am not sure what those might be.

MR. SCHWARTZBAUER: Well, I don't have anything in mind, I am just asking the question. I just want to find out who retained Professor Pfannkuch and why.

MR. SHAKMAN: If it's in regard to the United States retaining him, I am instructing this witness not to answer on the grounds of work product.

MR. SCHWARTZBAUER: Well, I don't believe Doctor Pfannkuch was retained for this lawsuit. I believe he was retained by the USGS to do research work and I am trying to find out the real

DEPOSITION OF DALE WIKRE:

APPENDIX E (continued)

PAGE: LINE REFERENCE	QUESTION ASKED	OBJECTION	REASON WHY ANSWER IS NOT PRIVILEGED
	facts. I submit that the witness may know them.	MR. SHAKMAN: We don't have the attorneys for the United States here today and I am only aware of what representations I have heard from them. It may well be true that Mr. Pfannkuch has been retained at different times in both regards. I don't know that the earlier relationship was not as you described. I am aware of the later one.	